LAWS FOR ALBERTANS

REVISED JANUARY 1984

85-0529/

All persons making use of the materials contained in **Laws for Albertans** are reminded that this pamphlet is intended to give merely a general statement of the laws of Alberta and is provided for information purposes only. While every effort has been made to ensure that the information in this publication is correct at the time of publication, neither the Crown, its agents or employees nor the authors of this publication, assume any responsibility or liability whatsoever for any financial loss or damage suffered as a result of this publication or the use of these materials or as a result of any changes in the law after the publication of these materials. Independent legal advice should be sought by anyone faced with a particular problem.

LAWS FOR ALBERTANS

REVISED JANUARY 1984

Introduction

Basic to our own sense of self and the manner in which we fit into a family, community, province or country, is the need to be aware of the guidelines which govern our interaction with our fellow human beings. From the most primitive to the most sophisticated cultures there can be found prescriptions and proscriptions which define specifically how one must act and react in order to function in maximum harmony in a given society.

As societies become more complex, the "do's and don'ts" are set out in a written form which we have come to know as the law. The laws in our country are structured to allow a maximum amount of individual freedom. One of the first and most important things with which a responsible citizen must come to terms is the fact that individual freedom must be limited at that point where one person's freedom begins to violate or infringe upon the freedom of another person.

This publication is offered as a simplified explanation of the way various levels of government function, and the laws for which they are responsible. You are reminded that this booklet is intended to provide a very general introduction to a very complex system. It is not intended as a substitute for professional help when legal problems arise.

Copies of provincial statutes are available at a nominal fee from:

Public Affairs Bureau
Print Procurement Services
204 J.J. Bowlen Building
620 Seventh Avenue S.W.
Calgary, Alberta
T2P 0Y8

Phone: 297-6251

Public Affairs Bureau
Publications and Statutes Branch
11510 Kingsway Avenue
Edmonton, Alberta
T5G 2Y5

Phone: 427-4952

Enclose a cheque with your order, made payable to the Provincial Treasurer.

Individual copies of this booklet are available free of charge from:

Alberta Women's Bureau
1910 Capitol Square
10065 Jasper Avenue
Edmonton, Alberta
T5J 3B1

Telephone: 427-2470

A Message from the Director

This is the fifth revision of **Laws for Albertans** since I assumed this position. The publication has undergone many changes in the last few years. A decade ago, it limited itself to "Laws of Interest to Women of Alberta" and, to bring the point home, the covers of earlier editions were pink!

Since I was appointed director of the Alberta Women's Bureau in 1975, which coincidentally was also International Women's Year, there have been many changes both to women's rights and in the social concerns which affect all of us.

A number of legislative changes demonstrate an evolving recognition of women's equal status. Prior to April 27, 1971, women had the right to refuse jury duty. A revision to *The Jury Act* effective that date requires women to accept jury duty as part of their responsibility as citizens. Similarly, both males and females in Alberta are now considered adults at age 16 and may be tried for criminal offences in adult court. Before October 1, 1978, female offenders were considered juveniles until age 18.

The Matrimonial Property Act, effective January 1, 1979, provides for equal sharing, modified by judicial discretion, of property acquired by a couple during marriage. Previous matrimonial property law gave spouses a right only to property to which they had made a financial contribution. The change in the law is of particular benefit to the woman whose marriage dissolves, and who had contributed her labour to a family business and/or had worked in the home as parent and homemaker. Before the change, many women in this position were entitled only to maintenance payments.

Effective January 1, 1977, an amendment to *The Alberta Labour Act* (since changed to *Employment Standards Act*) provided for unpaid maternity leave of up to 18 weeks, to an employee who had been in the job with that employer for at least one year, permitting her to return to the same or comparable job, without loss of pay or benefits.

Sexual harassment can now be investigated under *The Individual's Rights Protection Act* and in the case of wife battering, some municipal police departments will lay charges rather than leaving that responsibility to the victim at a time when they are most vulnerable.

As recently as 1981, women's rights were a "negotiable" item as evidenced during the Constitutional talks. A woman's right to equality was a matter of debate! The principle of equality of women and men in Canadian law is now established in the Charter of Rights and Freedoms. However, women had to fight hard to attain this right. Included in this issue of **Laws for Albertans** are the rights we can enjoy — both men and women — under *The Constitution Act, 1982*.

E. Phyllis Ellis

E. Phyllis Ellis, Director
Alberta Women's Bureau

TABLE OF CONTENTS

	Page
A Message from the Director	i
Introduction	ii
Table of Contents	iii-iv-v
Your Province — Your Law	1
Levels of Government	3
Federal Government	3
Passing of Federal Legislation	3
Federal Elections	4
Voting in Federal Elections	4
Provincial Government	4
Voting in Provincial Elections	5
Municipal Elections	5
Courts	6
The Judiciary	6
Jury Duty	6
Witnesses	6
The Public Trustee (Minor Children and Estates)	7
The Public Guardian	8
Lawyer Referral Service	8
Legal Aid Society of Alberta	8
Marriage and the Family	10
Regulations Governing Marriage	10
Common-Law Relationships	11
The Married Women's Act	12
The Dower Act	12
Right of Wife to Pledge Husband's Credit	13
The Family Relief Act	14
Presumption of Death	14
The Domestic Relations Act	15
Judicial Separation	15
Alimony and Maintenance	15
Protection Orders	15
Divorce	15
The Matrimonial Property Act	17
Child's Lawyer (Amicus Curiae)	17
The Alimony Orders Enforcement Act	18
The Reciprocal Enforcement of Maintenance Orders Act	18
The Extra-Provincial Enforcement of Custody Orders Act	19
Family Court	19
Child Adoption	20
The Child Welfare Act	20
Illegitimacy	20
The Age of Majority Act	21
The Juvenile Delinquents Act	21

Health and Social Services 22
Alberta Health Care Insurance Plan 22
Widows' Pension Act 22
The Mental Health Act — 1972 23
Sex Changes 24
The Human Tissue Gift Act — 1973 25
The Venereal Diseases Prevention Act 25
The Emergency Medical Aid Act 25
Where to Find Help 25
Family and Community Support Services (formerly Preventive Social Services) 26

Human Rights 27
The Alberta Bill of Rights 27
The Individual's Rights Protection Act 27
Alberta Human Rights Commission 28
Remedies 29
The Dependent Adults Act 29
Guardianship 30
Trusteeship 30
Certificate of Incapacity 30

The Citizenship Act 32

Use of Names 33
The Change of Name Act 33

Wills and Estates 34
Guardianship (Minor Children and Estates) 38

The Intestate Succession Act 40

The Social Care Facilities Licensing Act 41

The Criminal Injuries Compensation Act 42

The Debtors' Assistance Act 43

The Bankruptcy Act 44

The Securities Commission 45

The Landlord and Tenant Act 46

Property Holding 48

The Expropriation Act 49

The Builders' Lien Act 50

Contracts 51

The Lord's Day Act 52

The Employment Standards Act 53

The Occupational Health and Safety Act 56

Workers' Compensation Act 57

Consumer Affairs 59
- *The Direct Sales Cancellation Act* 59
- *The Motor Vehicle Accident Claims Act* 60
- *The Alberta Insurance Act* 60
- *The Fatal Accidents Act* 61

Student Financial Assistance 62

The Ombudsman 63

Your Province — Your Law

THE PROVINCE of Alberta was established in 1905 by *The Alberta Act*, an act of the Parliament of Canada.

Power to change the law and make new laws is shared by the Parliament of Canada and the Alberta Legislature. This power is divided between the two governments by *The Constitution Act, 1867*. Generally speaking, neither government can make laws concerning matters within the jurisdiction of the other.

The province has the right to legislate on matters of a local nature, such as property and civil rights, municipal government, and marriage. Parliament has the right to make laws concerning crime, divorce, currency and banking, trade and commerce, and matters of country-wide importance.

Canada's constitution was patriated with the proclamation of the *Constitution Act, 1982*. As a result, Canadians have achieved full and complete sovereignty: the Parliament of the United Kingdom no longer has the power to legislate for Canada. The *Constitution Act* also provides: a procedure for amending the Constitution; a Charter of Rights and Freedoms; recognition of the existing rights of Canada's aboriginal peoples; clarification and strengthening of provincial legislative powers over natural resources; and a commitment to promote equal opportunities for all Canadians and reduce regional disparities.

The rights guaranteed by the Charter include:

Fundamental Freedoms: These are the freedoms of conscience and religion, freedom of thought, belief, opinion and expression including freedom of the press and media, freedom of peaceful assembly and freedom of association.

Democratic Rights: These include the right to vote and run for office and the guarantee of regular democratic elections.

Mobility Rights: These are the right to enter, leave and remain in Canada, and the right to move within Canada.

Legal Rights: These include the right to life, liberty and security of the person; freedom from unreasonable search and seizure; the right not to be arbitrarily detained or imprisoned; the right to be informed of reasons for arrest, instruct counsel and the right to habeas corpus. As well, extensive rules for fair trials are listed.

Equality Rights: This section prohibits discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. This section does not come into effect until April 1985 to allow governments time to review past legislation to ensure it is consistent with the terms of the Charter.

Language Rights: English and French are declared the official languages of Canada and are equal in status and use in all federal institutions and all institutions of the government of New Brunswick. These provisions do not extend to the legislature or institutions of the Government of Alberta.

Minority Language Education Rights: This section provides certain guarantees for English and French school instruction out of public funds and establishes a "where numbers warrant" test.

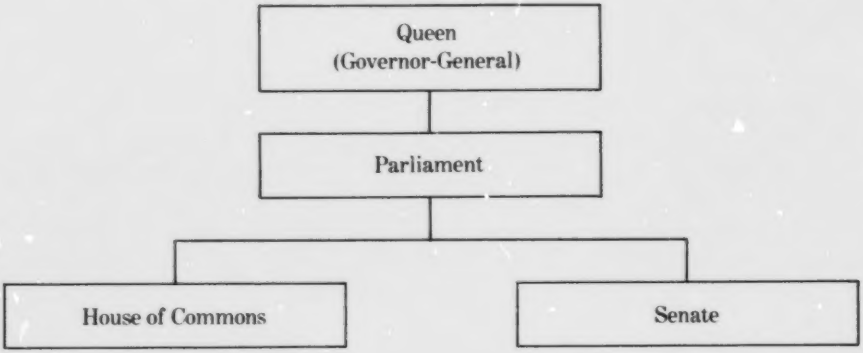
By virtue of Section 33 of the Charter of Rights, certain guarantees are subject to a legislative override by Parliament and the provincial legislatures. To ensure a continued public review, any legislation introduced under the "notwithstanding" provisions will automatically expire in five years unless such legislation is re-enacted by the legislature. Section 33 was included in the Charter to maintain Canada's historic tradition of Parliamentary supremacy.

Remember and appreciate the fact that the Parliament of Canada and the Alberta Legislature are in essence the voices of YOU, the citizen. The laws in reality reflect the sense of right and wrong, and the respect for justice and mercy as set out by YOUR elected representatives.

Levels of Government

FEDERAL GOVERNMENT

The official representative of the Queen (sometimes known as the Crown) is the Governor-General, who is appointed by the Queen, on the advice of the Canadian Prime Minister, for the term of five to seven years. The Governor-General has little actual power; tradition dictates that the advice of the cabinet be followed. Orders by the Governor-General-in-Council are in reality decisions formally reached by the cabinet. "Council", as used above, refers to the Privy Council, which is made up of all living members of cabinets past and present, and other distinguished persons. The present-day cabinet usually makes the decisions and then speaks on behalf of other members of the Privy Council.



The House of Commons is made up of elected members who represent the public. It decides on legislation, acts of Parliament, authorizes expenditures and levies taxes. The political party with the majority of members in the House of Commons is called the Government. The Opposition, or minority, has the job of questioning the Government, bringing out different ideas, and generally keeping the Government "on its toes".

Members of the Senate are appointed by the Governor-General-in -Council. To qualify for the appointment they must have property worth $4,000.00, be over thirty and under seventy-six years of age. The Senate originates bills and reviews bills coming from the House of Commons.

The Executive Council is made up of the Prime Minister and his cabinet. This body formulates government policies. Each minister in the cabinet is usually responsible for one or more government departments, and represents these departments in the House of Commons. A cabinet minister who does not head a department is called a "Minister without Porfolio".

PASSING OF FEDERAL LEGISLATION

Before a federal bill becomes law, it must go through three readings in the House of Commons, receive three readings in the Senate and then go to the Governor-General for signature.

The first reading of a bill is in fact only an announcement, and the bill is made available to the members of Parliament for study. At the time of second reading the bill is debated in the House of Commons and then put to a vote. If the bill passes second reading it goes to committee for study in detail and for any necessary revisions. At the third reading the bill may be passed, defeated, sent to committee for further revision, or deferred to a later date.

FEDERAL ELECTIONS

The election date is fixed by the Governor-General-in-Council. The Governor-General then sends an order for the Chief Electoral Officer to proceed. Writs of election are then issued to the returning officers. Returning officers make all arrangements for the election in their areas and then post notices of the election, indicating:

(1) final date for nomination of candidates

(2) the date of balloting.

Enumeration of electors begins forty-nine days before the election. Two enumerators (one representing each of the two leading political parties) make a list of all voters. This list is publicly posted for voter inspection. Any errors or omissions are reported to and corrected before a revising officer (a judge or an appointee).

On election day, each poll is supervised by a Deputy Returning Officer. Votes are also counted by the Deputy Returning Officer. Ballots and lists are sent to the returning officers under lock and key.

VOTING IN FEDERAL ELECTIONS

You are eligible to vote in a federal election if you are a Canadian citizen who has attained the age of 18 years on or before polling day.

Certain people are not permitted to vote, for example:

(1) the Chief Electoral Officer and his/her assistant

(2) the returning officers

(3) judges appointed by the Governor-General-in-Council

(4) prison inmates

(5) those committed to an institution because of mental illness

(6) those disqualified from voting because of corrupt or illegal practices.

PROVINCIAL GOVERNMENT

In the provincial government, the Lieutenant-Governor is the official representative of the Queen, and is appointed for a five-year term by the Governor-General-in-Council. The Lieutenant-Governor acts on the advice of the provincial Executive Council. The premier is the head of the Executive Council, and the members are those Members of the Legislative Assembly who are chosen by the premier to act as cabinet ministers.

The operation of a provincial legislature is somewhat similar to that of the federal government. However, there is only one house. In Alberta, at the present time, the

legislature consists of 79 members, each one representing an Alberta constituency. The provincial legislature has jurisdiction over certain matters such as education, property and civil rights, certain courts, jails, hospitals, and highways.

For ease of local administration, the rural area of the province is divided into counties, municipal districts, and improvement districts. Urban areas include cities, towns, villages and summer villages.

VOTING IN PROVINCIAL ELECTIONS

To be eligible to vote in a provincial election, you must:

(1) be a Canadian citizen on the day the writ was issued

(2) be at least 18 years old on polling day

(3) have lived in Alberta for at least six months prior to the day the writ was issued

(4) be a resident in the electoral division and polling subdivision in which you vote.

In a provincial election, if your name does not appear on the official list of electors prior to election day, you may take an oath before the Deputy Returning Officer or a polling clerk, when you go to vote. Your name will then be entered in the poll book and you will be allowed to cast your ballot.

However, in a federal election, you must make sure that your name is on the official list of electors, if you live in an urban area. Otherwise you will not be allowed to vote. In a rural polling division, you may vote if your name is not on the list, provided you swear an oath at the poll and an elector whose name is on the official list accompanies you to the polling station and vouches for you.

MUNICIPAL ELECTIONS

To vote for mayor and councillors in a municipal election, or to be eligible to vote on a question or a by-law in a municipality, you must:

(1) have attained the age of 18 years

(2) be a Canadian citizen

(3) have resided in Alberta for six consecutive months immediately preceding polling day

(4) be a resident in the municipality on polling day.

To be eligible to be elected a member of council you must:

(1) have attained the age of 18 years

(2) be a Canadian citizen

(3) have resided in Alberta for 12 consecutive months immediately preceding nomination day

(4) have resided in the city, town, village or municipal district for six consecutive months immediately preceding nomination day

(5) be eligible to vote as an elector in the election for which you are nominated.

Courts

THE JUDICIARY

The laws are made and amended by the governing bodies, but are administered by the courts. Judges of federal courts and the superior courts of the provinces may hold office until they reach 75 years of age. Their tenure depends on good behavior and they may be removed from office by the Governor-General at the request of the Senate and the House of Commons. They are therefore ultimately responsible to Parliament, although they are not representative agents of the Government (Section 99, B.N.A. Act). Besides being responsible for the administration of justice, the judiciary must interpret and advise the Governor-General or the Lieutenant-Governor-in-Council on matters of the Constitution. In the case of a dispute, the court makes the final decision.

Federal courts include the Supreme Court of Canada, the Federal or Exchequer Court, and other minor courts. Provincial courts include the Court of Queen's Bench and the Provincial courts.

JURY DUTY

In Alberta, juries consist of six persons in civil cases and 12 persons in criminal cases. Juries are seldom used in civil cases. To be eligible for jury duty, a person must be at least 18 years of age and a Canadian citizen or a natural-born British subject.

Certain categories of people, such as firefighter, police officers, doctors, nurses, members of the clergy and armed forces, and many others are exempt from jury service.

The Jury Act revision of August 1, 1921 made women eligible to serve on juries. However, women could not be compelled to serve as jurors and were given the right to refuse jury duty. Under a revision to *The Jury Act*, effective April 27, 1971, women were called to serve equally with men on Alberta juries.

WITNESSES

Many citizens have the experience of being called as witnesses in either a civil or criminal court proceeding. Witnesses required to give evidence may be notified informally or their presence in court may be compelled by either a subpoena or a notice to appear.

A subpoena is an order of the court commanding a witness to come to a specific court at a set time and place. Disobeying such an order is a criminal offence and a warrant may be issued for the arrest of the absentee witness.

A notice to appear is the usual method used in civil trials and should be accompanied by conduct money. This is a prescribed amount of money to which the witness is entitled for the time spent in court and related expenses.

On taking the stand, the witness is first sworn in. This may be done either by an oath taken on the Bible or by the witness affirming to tell the truth. The witnesses are obliged to answer all proper questions put to them and a failure to do so may result in a finding of contempt of court. Giving false evidence is considered perjury, a criminal offence for which the witness may be prosecuted.

The purpose of witnesses is to present evidence to a court or other judicial body, in order that the facts of the matter may be determined. Citizens should look on this as a public duty they must fulfil in the interests of furthering justice.

Further information as to the duties and obligations of a witness in court proceedings may be obtained by calling Communications, Alberta Attorney General at 427-8530 in Edmonton.

For further information on courts, refer to *Courts in Alberta*, a publication issued by Alberta Attorney General.

THE PUBLIC TRUSTEE

The Public Trustee may, under statute:

(a) where no person has been appointed, to act as guardian ad litem of the estate of a minor

(b) act in the administration of estates

(Many Albertans who have no relatives or principal beneficiaries resident in the province take advantage of the Public Trustee's professional skill and knowledge and appoint him executor of their will.)

(c) act as custodian of property of missing persons, convicts and deceased persons

(d) upon order of the court, act as judicial trustee of the estate of a deceased person

(e) either alone or jointly with any other person/s, accept and carry out a trust where he is appointed for that purpose

(f) act as a trustee of the estate of a minor made a ward of the province under the provisions of *The Child Welfare Act*

(g) act in such other capacity and do such other acts as authorized or required to do by Rules of Court, Order of a Judge or the Lieutenant-Governor-in-Council, or by *The Public Trustee Act*

(h) act as the trustee of the estate of a mentally incompetent person

(i) if no person has been appointed to act as guardian ad litem of the estate of a minor

(j) if no person has been appointed by the court to act for the estate of an unborn minor, act as guardian or custodian of the estate of a minor, if the minor has or may have property invested in him/her or is or may be entitled after a certain interval or contingency to property under an intestacy, will, settlement, trust deed or other instrument or in any other manner.

The Public Trustee is entitled to the same costs as are payable to counsel and solicitors, and to administration fees either as agreed upon by adult beneficiaries of an estate or as determined by the court upon notice to all concerned.

A barrister and solicitor with at least 10 years' standing, The Public Trustee is responsible to Alberta Attorney General and has offices in Edmonton and Calgary.

For information regarding further responsibilities of the Public Trustee, read the section on *The Dependent Adults Act* in this publication.

THE PUBLIC GUARDIAN

The Public Guardian is a government official with the Department of Social Services and Community Health, whose duties are legislated under *The Dependent Adults Act*. Where no family member nor private individual will undertake guardianship for a dependent adult, the Public Guardian must apply to the court to become that person's partial or plenary (total) guardian.

It is important not to confuse the Public Guardian with the Public Trustee. The Public Guardian is charged with looking after the personal needs of dependent adults. The Public Trustee is charged with administering the financial affairs of certain minor and adult citizens, as well as the financial affairs of dependent adults under *The Dependent Adults Act*.

For more information, see *The Dependent Adults Act* section of this booklet or contact a lawyer or send inquiries to your Regional Office of The Office of the Public Guardian.

LAWYER REFERRAL SERVICE

Lawyer Referral is a free service offered by the Law Society of Alberta. The system works as follows:

(1) A person who requires the services of a lawyer and is able to afford one, should contact Lawyer Referral Service at 1-800-332-1110 in Calgary (toll-free). Calgary residents should call 263-5988.

(2) Callers will be asked to identify the problem they have, i.e., wills, traffic offences, landlord/tenant disputes, etc.

(3) The caller is given the names, addresses and telephone numbers of three local lawyers who prefer to practise in that particular area of law.

(4) Callers should advise the lawyer they have been referred by Lawyer Referral Service.

(5) The lawyer chosen will provide a one-half hour consultation for a fee not exceeding $10.00. If additional services are necessary, the fee is arranged between the client and the lawyer.

LEGAL AID SOCIETY OF ALBERTA

Legal aid is available in Alberta to persons who are unable to hire a lawyer because they do not have the money or cannot expect in the near future to have the money to do so. Eligibility for legal aid is dependent upon such circumstances as income, cash on hand, assets, ability to borrow, family responsibilities, etc. Upon application for legal aid, each applicant's financial situation is reviewed. If it is felt that legal fees would present a hardship, the application will be accepted.

Legal aid is not free. When a lawyer is engaged by the society on behalf of an applicant, the lawyer submits the bill to Legal Aid Society. Clients who are able to do so are expected to contribute in whole or in part to the cost of legal assistance supplied to them. Therefore, when applying for legal aid, you may be asked to sign a promissory note for a specific amount to be paid to the Legal Aid Society.

Criminal legal aid may be extended to persons in relation to:

(1) criminal prosecutions of indictable offences

(2) prosecutions of indictable offences under *The Narcotic Control Act* and *The Food and Drug Act*

(3) prosecutions under *The Juvenile Delinquents Act*

(4) applications for bail

(5) appeals.

Civil legal aid may be extended to persons in relation to:

(1) commencing legal proceedings

(2) defending legal proceedings

(3) being a party to legal proceedings.

If you wish legal aid assistance, contact the Legal Aid Society at:

401 Melton Building
10310 Jasper Avenue
Edmonton, Alberta
T5J 2N4

Telephone: 427-7575

100 Rocky Mountain Plaza
615 Macleod Trail South East
Calgary, Alberta
T2G 4T8

Telephone: 297-2260

or at the Court House in any of the following locations:

Drumheller
Fort Macleod
Grande Prairie
Hanna
Lethbridge
Medicine Hat
Peace River
Red Deer
Vegreville
Wetaskiwin

In addition, applications for legal aid assistance may be obtained from:

(1) a Clerk of the Court in any court house in Alberta

(2) any R.C.M.P. detachment or lockup in Alberta

(3) any provincial mental hospital or other place of incarceration in Alberta

(4) any law office in any city or town in Alberta where there is no court house.

Marriage and the Family

REGULATIONS GOVERNING MARRIAGE

Marriage licensing and regulations are determined by each province. In Alberta, you may marry if you meet certain requirements of age, understanding and status.

AGE

If you are 18 years of age or older you may marry, provided you meet the other requirements. If you are 16 or 17 years of age, the consent of both parents (if living) or a court order dispensing with parental consent, is required. If your parents are separated or divorced (under a decree of judicial separation or a separation agreement), the consent may be given by the parent or other person who has legal custody of you. If you are a ward of the Crown, consent may be given by the Director of Child Welfare.

No person under the age of 16 may marry, except for a female who is pregnant or the mother of a living child. In this instance, parental consent and a doctor's certificate are required.

MENTAL CAPACITY

Both parties must understand what the marriage contract means, as well as the duties and responsibilities relating to marriage.

INELIGIBILITY

A person who is already married may not marry, nor may a person marry someone who is closely related through blood or marriage, i.e. sister/brother, mother/father, daughter/son, etc.

LICENSE

Marriage licenses are issued by the Vital Statistics Division of Alberta Social Services and Community Health. Licenses are valid for three months after the issuing date. Divorced persons are required to produce papers regarding the final decree when applying for a marriage license.

BLOOD TESTS

Each applicant must have a blood test (unless over 60 years of age) within 14 days prior to applying for the marriage license. It is not necessary to wait for the results of the blood test.

THE CEREMONY

A member of the clergy or marriage commissioner may perform the marriage only after receiving a valid license.

COMMON-LAW RELATIONSHIPS

Although common-law relationships are not legally recognized in the province of Alberta with regard to automatic division of property, rights may arise in certain circumstances, for example upon the death of one of the partners or upon a mother making a court application to have a father support an illegitimate child. You should consult a lawyer to learn under which laws claims can be made on your behalf or that of dependent children from the union.

Since common-law relationships are not legally performed and registered marriages, they require no legal action to dissolve them. If the relationship should end, you may take with you only what is legally yours, and neither is entitled to maintenance from the other. If one of the partners in a common-law union should die, the other has no inheritance rights unless specifically named in the will. If children are born, they are illegitimate and their father will not be legally required to support them unless their mother goes through a paternity action on their behalf.

Children from a common-law union must ordinarily be registered with their mother's surname, unless their parents make a joint request to the Vital Statistics Division of Alberta Social Services and Community Health, in which the father signs an "Acknowledgement of Paternity".

Alberta Social Services and Community Health recognizes the common-law relationship for the purpose of assessing the amount of social assistance payable, in the same way as a legal marriage.

Also, there are now five laws which recognize the common-law relationships of Alberta residents.

(1) THE CANADA PENSION ACT — a federal statute which, upon the death of a person who has made contributions under the Act, allows the common-law partner to claim certain death benefits and, in certain situations, a pension. Under the Act, a common-law partner will be treated as a spouse:

   (a) where s/he has been maintained and publicly held out to be a spouse by the contributor for one year, if neither of the parties is legally married to another person

   (b) where s/he has been maintained by and publicly represented as a spouse of the contributor for three years, if one of the common-law partners is legally married to another person.

(2) THE ALBERTA WORKERS' COMPENSATION ACT — a provincial statute, which provides compensation to the surviving legal spouse of a worker, who dies as the result of an accident at work. However, where the deceased worker left no dependent legal spouse, the Workers' Compensation Board may exercise its discretion in making the compensation payable to the surviving common-law partner, who cohabited with the deceased worker for two years immediately preceding the death (where there are children of the union), or for five years if there are no children. Likewise, if a spouse remarries or enters a common-law relationship for a length of time described above, there is no longer an eligibility for compensation.

(3) THE INTESTATE SUCCESSION ACT — a provincial statute, which gives inheritance rights to the illegitimate children of a deceased father, provided said father has left no widow or legitimate children. It is also necessary that the deceased has acknowledged the paternity, or has been declared to be the father by an Order of the Court.

(4) THE ALBERTA INSURANCE ACT — a provincial statute, which provides for benefits payable to a common-law partner if the deceased lived with said person for a period of five years prior to the mishap. This qualifying time period is decreased to two years if the deceased cohabited with a common-law partner during that time and one or more children resulted from the union. (See also page 60 of this publication.)

(5) PUBLIC SERVICE PENSION ACT — a provincial statute which provides a deceased contributor's spouse with benefits. The definition of spouse under the act includes a common-law partner who cohabited with the employee for a five-year period immediately preceeding the employee's death or for a two year period where there are children of the union; and, a person who was dependent upon the employee at the time of death and was known in the community as a consort of the employee.

For further information on this topic, you may request a free copy of *Common-Law Relationships in Alberta* from the Alberta Women's Bureau.

THE MARRIED WOMEN'S ACT

Under old laws, a married woman was deemed to be so closely identified with her husband and so much under his control and influence that she could not be held responsible personally for wrongs committed by her and she could not sue personally for wrongs committed against her. While she could own property in her own name, the power to dispose of it was in her husband's control. Generally speaking, an unmarried woman had the same rights and liabilities as a man; but when she married, the husband assumed both her rights and her liabilities.

Today, the married woman has the same rights and liabilities as the unmarried woman, and *The Married Women's Act* states that a married woman:

(1) is capable of acquiring, holding and disposing of any property

(2) is capable of suing and being made liable in respect of a tort, contract, debt or obligation

(3) is capable, without her husband being joined as a party, of suing and being sued, either in contract, including a contract made between her and her husband, or in tort or otherwise

(4) is subject to the law relating to bankruptcy and to the enforcement of judgments.

Spouses may not sue each other in tort with the exception that a married woman may sue her husband in tort in order to protect her separate property.

THE DOWER ACT

Dower rights are those rights given by *The Dower Act* to the spouse of a married person regarding the homestead and personal property of the married person.

The homestead is the parcel of land on which a dwelling occupied by the owner as a residence is situated. In a city, town or village, it may consist of not more than four adjoining lots; outside of a city, town or village, the homestead may consist of not more than a quarter section of land.

Essentially, *The Dower Act* prohibits a married person from selling, giving, or willing away the homestead without the consent of his or her spouse. An order by a judge may be obtained, dispensing with the consent of the spouse to the disposition of the homestead by a married person when:

(1) the married person and the spouse are living apart

(2) the whereabouts of the spouse is unknown

(3) the spouse is mentally incompetent or of unsound mind

(4) the married person has two or more homesteads

(5) the spouse has not lived in the province since the marriage

(6) the spouse has executed an agreement in writing for valuable consideration and in accordance with *The Dower Act*, to release the claim of the spouse to the dower. This agreement may be contained in or form part of a separation agreement and may apply to all homesteads of the married person or only to a described homestead. In order for the agreement to be valid, it must be in writing and must be signed by the spouse releasing the dower rights in the presence of a lawyer (excluding the married partner's lawyer or a partner or employee thereof). The married partner cannot be present when the agreement is being signed.

In order for one spouse to dispose of a homestead, the consent of the other spouse is required, plus an acknowledgement taken separate and apart from the lawyer or spouse who were parties to the original sale. This acknowledgement is evidence that the consent was freely and voluntarily given with knowledge of the rights involved.

A judge may by order dispense with the consent of the spouse if, in the opinion of the judge, it appears fair and reasonable under the circumstances to do so.

If a married person disposes of the homestead without the spouse's consent or an order by a judge dispensing with the spouse's consent, the married person is liable to the spouse for half the value or half the selling price of the property, whichever is greater.

In the event of death of one spouse, the other spouse is entitled to the use of the homestead for the remainder of his or her life.

RIGHT OF WIFE TO PLEDGE HUSBAND'S CREDIT

If a wife is living with her husband she has an implied power to pledge (promise) his credit for things that are necessary for herself or the household. The amount that can be pledged varies with the couple's living standard.

The right to pledge credit exists unless the husband can show that the wife does not have his permission. He may do this by showing that:

(1) he has told tradespeople not to give her credit

(2) he has forbidden her to pledge his credit

(3) she is given a substantial allowance on the understanding that she will not pledge his credit.

If a wife has been deserted by her husband or if she has had to leave him for a good reason (such as cruelty), she becomes what is known as an "agent of necessity". This means that she may pledge his credit for necessities unless he is giving her an allowance. The husband cannot end this by forbidding her to pledge his credit or by telling tradespeople not to give her credit. Credit may be terminated by misconduct on the wife's part.

If a wife has left her husband without good reason, she is not allowed to pledge her husband's credit.

THE FAMILY RELIEF ACT

It is possible that a deceased person's family may not be adequately provided for in the will or under *The Intestate Succession Act* (if there is no will). In these cases, courts have the power to see that adequate provision for maintenance and support is made from the estate of the deceased. Dependents include:

(1) the spouse

(2) children under 18 years of age. In addition to legitimate children born prior to the deceased person's death, the act includes:

(a) a child of the deceased born after the death of the deceased

(b) an illegitimate child whose deceased father has acknowledged the paternity of the child, or has been declared to be the father of the child by order of *The Maintenance and Recovery Act* or any prior acts providing for affiliation or paternity, or an illegitimate child of a deceased woman

(c) children over 18 years of age who are unable to support themselves because of mental or physical disability.

No application for assistance under *The Family Relief Act* can be made to the court after six months from the grant of probate of the will or of letters of administration, unless the judge, considers it just, allows an application to be made after that time.

PRESUMPTION OF DEATH

An order may be obtained that presumes a spouse to be dead if:

(1) the spouse has been continually absent for seven years

(2) no evidence can be found showing that the spouse is alive.

However, if you do not know the whereabouts of your spouse, or if you have been unable to locate your spouse for three years, and you do not know whether your spouse is dead or alive, you may obtain a divorce. If you remarry after obtaining a divorce for any of these reasons, your second marriage will remain legally valid even if your first spouse should reappear.

THE DOMESTIC RELATIONS ACT

JUDICIAL SEPARATION

A husband or wife may petition for a decree of judicial separation on the grounds of adultery, cruelty, desertion for two years or more without reasonable cause, or failure to comply with an order for restitution of conjugal rights. Sodomy or bestiality or an attempt to commit either of these acts is also grounds for judicial separation. "Cruelty" includes any conduct which endangers life, limb or health, or which is grossly insulting and intolerable, or of such a character that the person seeking the separation could not reasonably be expected to willingly live with the other after s/he has been guilty of such conduct.

ALIMONY AND MAINTENANCE

When entitled to maintain an action for judicial separation a person may, with that action or separately, sue for alimony. There are two types of alimony orders which can be made:

(1) interim orders which provide for the plaintiff during the period of time between the commencement of the action and the court order of judicial separation. An interim order will not be made if the plaintiff has, from any source whatsoever, sufficient means of support independent of the defendant.

(2) orders for payment of alimony after judicial separation has been granted. A defendant who pays the sum ordered, no matter how small, will not be liable for necessaries supplied to the plaintiff. A change in the order may be made upon a change in the circumstances of the parties. The foregoing actions are conducted in the Court of Queen's Bench.

PROTECTION ORDERS

An alternative procedure is provided whereby a married person may apply to a magistrate, who may make an order requiring the spouse to pay for the maintenance of the applicant and family. A married person is deemed to have been deserted within the meaning of this part when one spouse has been deserted by the other or is living apart from the spouse, because of cruelty or because of refusal or neglect of the spouse without sufficient cause, to supply food or other necessities when able to do so.

If the magistrate decides that the applicant was not deserted by the spouse and is not entitled to aid, the magistrate may make an order restricted to the maintenance of the children. A divorced person may also apply under this procedure for an order for maintenance restricted to the children (that is, the legitimate children of the marriage).

DIVORCE

Divorce actions are conducted in the Court of Queen's Bench according to *The Divorce Act*, which is a federal statute applicable to all provinces of Canada. Prior to the 1968 Divorce Act, a divorce could be granted on grounds of adultery only. However, under the new act the following grounds were added:

(1) sodomy, bestiality or rape

(2) form of marriage with another person (bigamy)

(3) physical or mental cruelty of such a kind as to render intolerable the continued cohabitation of the spouses

(4) homosexuality. For homosexuality to be grounds for divorce, homosexual acts must be proven by clear evidence. One spouse cannot admit to homosexuality; he or she must admit to a particular act.

In addition to the above, an action for divorce may be presented to the court by the husband or the wife where they are living separate and apart, on the grounds that there has been a permanent breakdown of their marriage by reason of one or more of the following circumstances:

(1) the respondent has been imprisoned for a period of not less than three years during the five-year period immediately preceding the presentation of the petition for divorce, or has been imprisoned for a period of not less than two years immediately preceding the presentation of the petition, for an offence of which the sentence is for a term of 10 years or more

(2) the respondent, for a period of not less than three years immediately preceding the presentation of the petition, has been grossly addicted to alcohol or narcotics, and there is no reasonable expectation of the respondent's rehabilitation within a reasonable foreseeable period

(3) the marriage has not been consummated and the respondent, for a period of not less than one year, has been unable by reason of illness or disability to consummate the marriage or has refused to consummate it

(4) the petitioner, for a period of not less than three years immediately preceding the presentation of the petition, has had no knowledge of or information as to the whereabouts of the respondent and, throughout that period, has been unable to locate the respondent

(5) the spouses have been living separate and apart for other reasons for a period of not less than three years or by reason of the petitioner's desertion of the respondent for a period of not less than five years immediately preceding the presentation of the petition.

Where marriage breakdown is listed as grounds for divorce, the court must be satisfied that no possibility exists for reconciliation of the husband and wife. Upon being satisfied that it is proper cause for divorce, the court grants a *decree nisi*. At this time the court may also decide on such matters as custody of the children, alimony and maintenance, and the division of matrimonial property, if a matrimonial property action has been brought concurrently with the divorce. There is then a waiting period of three months, after which, if no reason is shown why it should not, the court grants a *decree absolute*. This waiting period may be abridged if the court is of the opinion that, because of special circumstances, it would be in the public interest to do so and if both parties agree and undertake that no appeal will be made. It is only after the issuance of the *decree absolute* that the parties are free to marry again.

The 1968 Divorce Act provides that the person who commences the action for divorce must be domiciled in Canada. The action must be commenced in the province where one of the parties has been ordinarily resident for a period of one year immediately preceding the presentation of the petition for divorce, and has actually resided there for at least 10 months of that period.

For more detailed information on this topic, request a copy of *Ending A Marriage: The Legal Aspects of Separation, Annulment and Divorce* from the Alberta Women's Bureau.

THE MATRIMONIAL PROPERTY ACT

As of January 1, 1979, either spouse may apply for a matrimonial property order under *The Matrimonial Property Act*. This would be appropriate in instances where there is disagreement between the spouses as to how their property should be divided and their marriage has ended through divorce, annulment, judicial separation or separation for one year (or less, if, in the court's opinion, there is no possibility of reconciliation). This Act does not apply if the spouses have entered into a written contract. It also does not apply to common-law relationships. Application for an order may be commenced at or after the date proceedings are begun for a decree of divorce, declaration of nullity or judgment of judicial separation. Application should be made within two years of marriage breakdown.

The Act provides that all property acquired during a marriage should be shared equally. Exceptions to this "equal sharing" ruling are to be decided by the judge who, under this Act, must take a number of different factors into account before making a decision. Some of these factors include:

(1) spouse's contributions to marriage and family welfare including any contribution made as a homemaker or a parent

(2) direct or indirect financial or other contributions to acquiring, conserving, improving, operating or managing businesses, farms or other enterprises

(3) spouse's roles in acquiring, conserving or improving property

(4) incomes, earning capacity, liabilities, obligations and additional property or financial resources, at both the time of marriage and break-up

(5) how long marriages last, the terms of any oral or written agreements between the spouses, gifts, previous property distributions, prior court orders and tax liabilities

(6) any other fact or circumstance the judge considers relevant.

The court also has the power to decide which spouse shall be given use of the home and household goods, and can issue an order to evict or restrain a spouse from entering the matrimonial home. This decision would depend on the personal and financial circumstances of the people involved.

The rights given under *The Matrimonial Property Act* are in addition to, and not a substitute for, the rights given to a spouse under *The Dower Act*. It also does not affect the rights of a spouse to make an application under *The Family Relief Act*.

For further information on this act, you may obtain a free copy of the pamphlet *Alberta's Matrimonial Property Law* from Alberta Women's Bureau or Alberta Attorney General.

CHILD'S LAWYER (AMICUS CURIAE)

An *amicus curiae* is a person, usually a lawyer, who has been appointed by the court to provide information on some fact or principle of law which has been overlooked. The most

common circumstance where an *amicus curiae* is used today is in the matter of child custody to ensure that the best interests of the child are considered. However, the child is not represented in the same way a lawyer usually represents a client.

Where parents are pursuing a divorce action or legal separation, the court will appoint someone independent of these two parties *amicus curiae*. After assessing the family's circumstances the *amicus curiae* will prepare a custody report. The court then uses the report to decide who, in the best interests of the child, should have custody.

THE ALIMONY ORDERS ENFORCEMENT ACT

This act provides a means for enforcement of alimony and maintenance orders. The person against whom the order is made may be called before a judge and examined as to means and ability to comply with the order. A person may be imprisoned for a period of up to one year if that person:

(1) fails to appear for the examination

(2) fails to give satisfactory answers to the questions asked

(3) has disposed of any property with the intent of avoiding compliance with the order, or

(4) has refused to comply with the order despite sufficient means or ability to do so.

THE RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS ACT

In most cases where an alimony or maintenance order is made, both the husband and wife reside in Alberta. There are cases where the defendant has left the province and is therefore outside the jurisdiction of the Alberta courts. Even though the plaintiff has obtained an alimony or maintenance order in Alberta, it is of no effect in the province or country where the defendant resides. It is therefore necessary for the plaintiff to take proceedings for an order against the defendant in the province or country where the defendant resides. The same is true where the plaintiff is in another province and the defendant has come to Alberta.

The Reciprocal Enforcement of Maintenance Orders Act is designed to meet this problem. Under this act, arrangements are made with other provinces and countries (called reciprocating states) whereby alimony and maintenance orders made by Alberta courts may be registered with the courts of the reciprocating states. In return, the orders of the courts of the reciprocating states can be registered in Alberta courts. The registered order can then be enforced as if it were an order of the court where it was originally registered.

In addition, the court has jurisdiction to order a provisional maintenance against a spouse, in the case of the spouse leaving the province before a final maintenance order can be made. This provisional order can be registered in the province where the spouse resides, for confirmation and enforcement purposes. Similarly, a provisional maintenance order made in another province will be heard by a court in this province and if the judge (upon hearing the spouse's evidence) decides that the provisional order should be confirmed, the order will be confirmed with or without variation.

THE EXTRA-PROVINCIAL ENFORCEMENT OF CUSTODY ORDERS ACT

The Extra-Provincial Enforcement Of Custody Orders Act took effect on May 18, 1977, empowering the court to enforce or vary custody orders made in other jurisdictions. This Act allows parents to enforce legal claim to their children, granted in another jurisdiction, without the need for another custody suit.

Alberta courts can vary custody orders, giving first consideration to the welfare of the child, regardless of the wishes or interests of any person seeking or opposing the variation. The court will treat the question of custody as being of first importance, and the question of access or visitation as being of secondary importance.

FAMILY COURT

The Family Court of Alberta was created by a provincial statute to deal with social-legal problems arising within the family. The aim of the court is to preserve the original family unit whenever possible, or to create as wholesome a family atmosphere as possible in what remains of the original family unit. Courts are located in major centers (Edmonton, Calgary, Lethbridge, Red Deer), but there are also circuit courts in centers all over the province. The Family Court tries to make itself as available as possible to those who are in need of its services. The court provides a counselling service to families with difficulties; if no mutual agreement can be reached, rulings are made by the court.

The Family Court has jurisdiction over both criminal and civil matters, which include:

Non-support	*Criminal Code* *Domestic Relations Act*
Family assault	*Criminal Code*
Threats or fear of personal injury	*Criminal Code*
Interdiction	*Liquor Control Act*
Maintenance enforcement	*Family Court Act* *Reciprocal Enforcement of Maintenance Orders Act*
Custody/access	*Family Court Act*
Committal of family member	*Mental Health Act*
Charges against adults under:	*School Act*
Charges against adults, including neglected children, supervision orders, temporary wardship, under:	*Child Welfare Act*

To locate the nearest Family Court, consult your telephone directory under Family Court or Juvenile and Family Courts, or contact the nearest Alberta Government R.I.T.E. (Regional Information Telephone Enquiry) operator. For further information you may obtain a free copy of the publication *Edmonton Family Court* from Alberta Attorney General.

CHILD ADOPTION

An adult person, whether single or married, may adopt a child. Alberta Social Services and Community Health tries to place all children who are permanent wards of the Crown into adoptive homes, and persons who wish to adopt may apply to have one of these children placed with them, with a view to adoption. Children who are not wards may be adopted by persons who already have such children in their care, as for example, when a child is placed privately for adoption by its parents, or when a new partner wishes to become the 'legal parent' of his or her spouse's children of a previous marriage. Such adoptions require the approval of the Director of Child Welfare and should be commenced, like those for wards, by application to Alberta Social Services and Community Health. If the department, after investigating, finds the adoptive parents are fit and proper persons and will provide a good home for the child, they will present the adoption petition to a judge of the Court of Queen's Bench for granting of the order. This order gives adoptive parents and children the same rights and obligations enjoyed by parents and their biological children.

THE CHILD WELFARE ACT

The Child Welfare Act provides for the protection of unmarried persons under 18 years of age whose well-being (physical, educational, social or moral) is endangered because of the failure, unfitness or inability of their parents or guardians.

In this province, Alberta Social Services and Community Health administers child welfare services. It has established a registry for the purpose of recording reports of adandonment, desertion and physical ill-treatment of children. Anyone suspecting child abuse has a duty to report it to their Regional Office of the department or by dialing 0 and asking for the toll free Zenith 22024. Edmonton residents may telephone 424-3106.

When a child welfare worker finds a child neglected, the matter is thoroughly investigated and a report submitted to a Juvenile Court judge. The judge may return the child to the parents, adjourn the case under the supervision of a child welfare worker, or make the child a temporary ward of the Crown. If a child remains a temporary ward, and it is not possible for the child welfare worker to help the parents provide a suitable home, or if it is felt that the parents will never be able to care for the child properly, then a judge in the Court of Queen's Bench will consider an application for permanent wardship.

A parent or guardian who is unable to look after a child because of illness or other misfortune, can enter into an agreement with the Director of Child Welfare to place the child in the custody or under the supervision of the director for a temporary period of time, so that adequate provision can be made for the care of the child.

ILLEGITIMACY

A child is considered to be illegitimate if born out of wedlock. If the parents of a child born out of wedlock subsequently marry, the child is considered to be legitimate from birth.

The father of a child born out of wedlock may be held responsible for the care (medical and other) of the mother for three months before the birth, and for as long as necessary after the birth of the child. He may also be required to pay a periodic sum towards the maintenance and education of the child until the child reaches 16 years of age (or 18 years if attending school), or longer if the child is mentally or physically incapable of self-support.

The mother or guardian of a child born out of wedlock, or the Director of Maintenance and Recovery, Alberta Social Services and Community Health, may lay a complaint within 24 months of the child's birth, against the man alleged to be the father. A complaint may also be laid within 12 months of the doing of an act by the alleged father that could reasonably be regarded as acknowledgement of paternity such as providing financial support or within 12 months after the return to Alberta of the alleged father where he was out of the province at the end of 14 months from the birth of the child. Upon presentation of sufficient evidence, a paternity order will be issued stating the amount to be paid by the father.

THE AGE OF MAJORITY ACT

Minors have almost no legal rights; they are under their parents' care, but are protected against abuses by their parents.

The civil age of majority, for both sexes, is 18, as provided in *The Age of Majority Act*. This means that anyone 18 or over, subject to other qualification restrictions, may vote in federal, provincial and municipal elections; mortgage or lease property; marry; and serve on a jury. In other words, being 18 means that a person has all the civil rights and responsibilities of an adult.

Under the criminal law as applied in Alberta, both males and females are considered to be minors until they are 16. Criminal prosecution of minors usually takes place in Juvenile Court under *The Juvenile Delinquents Act*, but can be waived to adult court if the offence is indictable and is very serious.

THE JUVENILE DELINQUENTS ACT

The Juvenile Delinquents Act will be repealed when the *Young Offenders Act* (R.S.C. 1980 - 81-82-83, c. 110) is proclaimed in force. As of this date, the Act is to be proclaimed and therefore effective in the Spring of 1984.

Health and Social Services

ALBERTA HEALTH CARE INSURANCE PLAN

All residents of Alberta must register with the Alberta Health Care Insurance Plan. By doing so you become entitled to coverage under the plan unless you complete the appropriate "opting-out" forms. If you opt out, you do not pay premiums and you are responsible for all your medical and hospital bills. You should, therefore, give careful consideration to the cost of both medical care and hospital care before deciding against Alberta Health Care Insurance coverage.

To qualify as a dependent under a parent's contract, a person must be:

(1) single, under 21, and completely dependent on the parent, or

(2) single, over 21, and financially dependent because of infirmity (either mental or physical), or

(3) single, under 25 and a full-time student at an accredited educational institution.

Subsidized rates are available for residents on limited yearly incomes. For information regarding subsidy or any other aspect of this health care plan contact the Alberta Health Care Insurance Plan at:

118 Avenue and Groat Road
Box 1360
Edmonton, Alberta
T5J 2N3
Telephone: 453-4110

Crosslands Building
629B Seventh Avenue S.W.
Calgary, Alberta
T2P 0Y9
Telephone: 297-6411

A married woman may have her Alberta Health Care Insurance card issued in her maiden name, if she so chooses. However, she would continue to be included under the same policy as her husband.

Senior citizens are exempt from Alberta Health Care Insurance premiums, but continue to receive coverage.

WIDOWS' PENSION ACT

The Alberta Widows' Pension Program provides financial and health care benefits to widows and widowers from a lawful marriage who are age 55 and over, but under age 65 and who have a limited income.

Benefits

There are three areas of benefits under the *Widows' Pension Act*.

(1) Financial: Individuals with no income will receive benefits similar to those received by Alberta senior citizens under the Alberta Assured Income Plan and Federal Income Security Program. The program will also supplement income of eligible widows and widowers so that they will receive a total income similar to what they would receive if they were 65.

(2) Health care: Persons eligible for this program will receive premium free Alberta Health Care Insurance and Blue Cross coverage. Extended health benefits which cover part of the cost of optical, dental, hearing and other medical needs are also provided.

(3) Housing: This part of the program is intended to assist widows and widowers who own their own home, and those who rent, to meet their expenses. You will need to apply for these programs separately, through the Department of Housing.

Application

To apply for a widows' pension you must provide the following:

- A fully completed and signed application form (available from the Department of Social Services and Community Health)
- Your marriage certificate
- Your spouse's death certificate
- A Canadian birth certificate or citizenship certificate, or proof of permanent residency in accordance with the *Canada Immigration Act*
- A copy of your income tax return for last year or copies of documents to verify your income.

Length Of Benefit

An annual reapplication is required and benefits may be adjusted at that time depending on your income in the previous year. Benefits will continue until you remarry or turn age 65.

Application forms are available at Treasury Branches and Provincial Buildings throughout Alberta, or from:

Alberta Widows' Pension Program
Social Services and Community Health
Seventh Street Plaza
10030 - 107 Street
Edmonton, Alberta
T5J 3E4

More information can also be obtained by calling Social Services and Community Health at 422-4080 in the greater Edmonton area, or by calling the operator and asking for the toll free line: **ZENITH 22001**.

THE MENTAL HEALTH ACT — 1972

The Mental Health Act serves two major purposes. The first purpose is to define the circumstances under which people, whose mental state may endanger themselves or others, can be assessed and detained for treatment.

Anyone who feels concerned that someone's mental disorder might threaten the safety of the individual or other people, may take one of four actions:

(1) call the local mental health clinic listed in the telephone book under Mental Health Services or the Government of Alberta, Social Services and Community Health for advice

(2) try to take the individual to a physician or to an hospital emergency room for examination to determine if the person should be confined for further assessments

(3) call a police officer who can observe the individual in a public place and, if required, arrange to take the person for an examination

(4) bring a statement of information before a provincial judge. The judge may issue a warrant to apprehend the person for examination, if it is considered to be in the best interests of all concerned and if the examination cannot be arranged in any other way.

The Act then allows a physician, a police officer or a provincial judge to authorize a person to be taken to a hospital for examination. One form of authorization is the conveyance and examination certificate, which is completed by a physician and is valid for 72 hours once it is written and signed. With this certificate, anyone can transport the individual to the hospital for assessment. This assessment as to the person's mental health and dangerousness must be completed within 24 hours, once the person has arrived at the hospital. If the evaluation shows that the person is mentally ill but not dangerous, the person must be released. Otherwise, the assessment can suggest that the person be formally admitted to an approved hospital for psychiatric treatment. In order for this to take place, two physicians must separately examine the person and sign the appropriate certificates. A formal admission lasts up to 30 days. Renewal certificates to detain a person for a longer period of time again require two physicians to separately examine the individual and complete the forms. A warrant to apprehend, issued by a provincial judge, has the same effect as a conveyance and examination certificate. Also, under some circumstances, a police officer, as part of his duties, may take an individual who seems to need psychiatric treatment to the hospital.

The second major purpose of *The Mental Health Act* is to define the rights of those patients who have been detained. Formally admitted patients are entitled to the following:

(1) to know why they are being detained

(2) to know how long they are to be detained

(3) to know the name, address and function of the appropriate review panel

(4) to appeal decisions which result in their detention

(5) to have a suitable interpreter if there are language difficulties

(6) to receive or send written communication without it being opened or withheld and receive visitors

(7) to be free from abuse.

SEX CHANGES

The Vital Statistics Act was amended in 1973 to cover sex changes and their subsequent registration.

A person who has undergone a sex change may apply to have his/her registration changed. This enables the person to obtain birth and marriage certificates indicating the new sex. To obtain the revised registration, the person involved must furnish proof of identification and medical certificates from two qualified medical doctors confirming the change.

THE HUMAN TISSUE GIFT ACT — 1973

Any person who is 18 years of age or older, is mentally competent and is making a free and knowledgeable decision, may consent (in writing) to have a specified tissue removed from his/her body and transplanted into another living person. This consent is void if the tissue is not removed for that purpose and at the time originally indicated in writing.

Persons who are 18 years of age or older may consent to the use of their bodies for medical or scientific purposes after death. This consent may be in writing or spoken in the presence of two witnesses during the last illness.

The closest living adult relative may consent to a person's body being used for medical or scientific purposes unless believed it may have been against the wishes of the deceased.

The fact of a donor's death shall be established by two physicians who have nothing to do with the person receiving the tissue and/or with the transplant operation.

You may obtain a Universal Donor Card at any branch of Alberta Motor Vehicles or at any medical centre (hospital, clinic, doctor's office, etc.). It is a form which you complete and sign, specifying in what manner you wish to contribute a part or parts of your body to medical science. This form is attached to your driver's license for immediate reference after death.

THE VENEREAL DISEASES PREVENTION ACT

This act states that anyone who either knows or thinks, s/he may be infected with venereal disease, should consult a physician or go to a provincial clinic. A physician or other person in an official capacity to know of venereal disease must report the case to the Director of Social Hygiene, Alberta Social Services and Community Health. If a person is infected, treatment will be ordered and must be taken. The treatment is paid for by the provincial government. Anyone refusing treatment for venereal disease may be detained until cured, and may be fined up to $200 or imprisoned for up to 90 days.

THE EMERGENCY MEDICAL AID ACT

A doctor, nurse or other person who renders first aid to a person who is ill, injured or unconscious at the scene of an accident, cannot be held liable for damages, for injuries, or for the death of the person, unless the injury or death was caused by gross negligence.

WHERE TO FIND HELP

In trying to obtain help with a problem or in registering a complaint, a person is faced with a multitude of federal, provincial and municipal departments and agencies. Some of the larger centers have Advice, Information and Direction (A.I.D.) centers. The staff there

will give you advice on who to contact and where. They may also distribute directories which list the agencies in the area. If there is no A.I.D. center in your area, contact the nearest Family & Community Social Services office. Most municipalities have a Family & Community Social Services office or employee who can assist you.

A.I.D. centers can be found in the following locations:

Calgary
Edmonton
Fort McMurray
Lethbridge (Information Lethbridge)
Lloydminster
Medicine Hat (Volunteer Services Bureau)

If you require assistance in contacting an Alberta government department or agency, contact the nearest R.I.T.E. (Regional Information Telephone Enquiry) operator. The operator will direct your call to a local government department or transfer your call to a major government center, where your problem or enquiry can be dealt with. This is done at no charge to the citizen. This system is available to all Alberta citizens, but not to private businesses, municipal governments, school boards, or the federal government.

FAMILY AND COMMUNITY SUPPORT SERVICES
(formerly Preventive Social Services)

In Alberta, the municipal and provincial governments are co-operating in bringing together a program designed to prevent social problems and to enrich the quality of life. Some of the programs which may be offered include: volunteer bureaus, help with budgeting, child care and home management, family planning clinics, services for senior citizens, and preventive counselling for families, parents and young people.

Anyone needing help with any of the above concerns should contact one of the more than 50 Family & Community Social Services offices located throughout the province. To locate the nearest office, contact your local municipal government.

Human Rights

In Alberta, two statutes protecting human rights are *The Alberta Bill of Rights* and *The Individual's Rights Protection Act.*

THE ALBERTA BILL OF RIGHTS

The Alberta Bill of Rights states that any individual has the right to personal liberty, security and the enjoyment of property. Individuals have the right not to be deprived of these except through the proper legal process. Each individual is entitled to the protection of the law and is equal with others before the law. The freedoms of religion, speech, meetings and the freedom of the press, have been reaffirmed. These rights and freedoms are to exist without discrimination because of race, religious beliefs, colour, sex, physical characteristics, age, ancestry or place of origin.

THE INDIVIDUAL'S RIGHTS PROTECTION ACT

The Individual's Rights Protection Act protects individuals or groups against discrimination and unfair practices. A short summary follows.

NOTICES

No one shall publish or display literature or symbols that indicate discrimination against a person or group of people because of race, religious beliefs, colour, sex, physical characteristics, age, ancestry or place of origin. This does not mean that facilities usually used by one sex, such as washrooms, cannot be identified.

ACCOMMODATION

Accommodation or services that are usually opened to the public shall not be denied to anyone because of race, religious beliefs, colour, sex, physical characteristics, ancestry or place of origin.

TENANCY

No one shall refuse any person the right to occupy, as a tenant, a commercial or self-contained dwelling unit that is advertised or otherwise represented as being available for occupancy by a tenant, because of race, religious beliefs, colour, sex, physical characteristics, ancestry or place of origin. Nor shall anyone be discriminated against in regard to the terms or conditions of the occupancy because of race, religious beliefs, colour, sex, physical characteristics, ancestry or place of origin.

PAY

Employers shall not employ any person at a rate of pay which is less than the rate at which any other employee is paid for similar or substantially similar work in the same establishment. Work is considered similar if duties performed are basically the same. This law is not broken if the difference in pay is due to a reasonable factor other than sex, and if the difference would normally have existed. An example of this is seniority in the number of years worked.

Employees who have been paid less than the rate of pay to which they are entitled may make a complaint to the Human Rights Commission OR take action against the employer for recovery of the difference in pay.

EMPLOYMENT

No employer shall refuse to employ or refuse to continue to employ any person, or discriminate against any person with regard to employment or any term or condition of employment, because of the person's race, religious beliefs, colour, sex, physical characteristics, marital status, age (45 to 65), ancestry or place of origin.

No person shall circulate any form of application for employment or publish any advertisement in connection with employment or make any written or oral inquiry of an applicant which expresses any limitation, specification or preference as to race, religious beliefs, colour, sex, physical characteristics, age, ancestry or place of origin.

Neither of the above provisions apply to a domestic employed in a private home or to a farm employee who resides in the employer's private home.

No trade union, employer's organization or occupational association shall exclude any person from membership, expel or suspend any member, or discriminate against any person because of race, religious beliefs, colour, sex, physical characteristics, age, ancestry or place of origin.

RETALIATION

No persons shall be evicted, discharged, suspended, expelled, intimidated, coerced, discriminated against, or have penalties imposed because they have complained, started or assisted in the prosecution of a complaint under this act.

Note: Physical characteristics, as defined in *The Individual's Rights Protection Act*, means any degree of physical disability, infirmity, malformation, or disfigurement caused by bodily injury, birth defect or illness, and includes epilepsy, paralysis, amputation, lack of physical co-ordination, blindness, deafness, muteness and physical reliance on a guide dog, wheelchair or other remedial appliance or device. Mental disorders are not a protected category.

ALBERTA HUMAN RIGHTS COMMISSION

The Individual's Rights Protection Act established the Alberta Human Rights Commission, which has the job of educating the public and promoting ideas of equality of all people. The Commission has powers of investigation and is responsible for the enforcement of this Act. If the Commission cannot effect a settlement, the matter could be turned over to a Board of Inquiry. The Board, appointed by the Minister of Labour, is separate and unique from the Commission. Boards of inquiry are open to the public.

Enquiries should be made to:

501 Edwards Professional Building
10053 - 111 Street
Edmonton, Alberta
T5K 2H8

Telephone: 427-7661

Dorchester Square
1333 Eighth Street S.W.
Calgary, Alberta
T2R 1M6

Telephone: 297-6571

REMEDIES

Remedies for contravening *The Individual's Rights Protection Act* are intended to place persons discriminated against in the position they would have been in had the unfair practice not occurred. The Commission does not have the power to order a settlement. It does, however, have the authority to negotiate settlements. After negotiating a settlement between the two parties involved, remedies might include any or all of the following:

(1) to cease the contravention complained of

(2) to refrain in future from committing the same or any similar contravention

(3) to make available to the person discriminated against the rights, opportunities or privileges which were denied contrary to this Act

(4) to compensate the person discriminated against for all or any part of any wages or income lost or expenses incurred by reason of the discriminatory action.

An order made by a Board of Inquiry may be entered with the Clerk of the Court of Queen's Bench and enforced in the same manner as an order of the Court of Queen's Bench.

THE DEPENDENT ADULTS ACT

The Dependent Adults Act, proclaimed in 1978, enables the court to appoint a legal guardian and/or a legal trustee for a person who is deemed by a District Court Judge to be "a Dependent Adult".

Dependent Adults are persons 18 years or older who have been legally judged to be "in need" of a guardian and/or a trustee because they are unable to care for themselves and are unable to make reasonable judgements in some or all of the matters relating to themselves.

The court may appoint, as either guardian or trustee, any person 18 years of age or older who consents to act in that capacity. The court must also be satisfied that the person is will act in the best interests of the Dependent Adult, will not have interests which will conflict with those of the Dependent Adult, is a suitable person to act as the guardian or trustee and is a resident of Alberta.

Parents or other family members may apply to be appointed as guardians or trustees. In instances where no family members are available or are judged inappropriate for appointment, any interested individual who meets the above criteria may make application to be so appointed.

The Dependent Adults Act was enacted to protect the rights of Dependent Adults. The legal guardian, public or private, must act to encourage the growth and development of the Dependent Adult, and must act in such a way as to protect and ensure the rights of the Dependent Adult. The act also makes similar stipulations for a trustee, public or private.

The Dependent Adult is protected from misuse of authority in two ways:

(1) a Guardianship or Trusteeship Order may be reviewed by the court at any time, at the request of the Dependent Adult or any interested person

(2) a Guardianship or Trusteeship Order must be reviewed by the court at least every three years.

The Public Guardian, in and for the Province of Alberta, is responsible for the guardianship provisions of *The Dependent Adults Act*. There are Regional Co-ordinators and representatives of the Public Guardian throughout Alberta.

For further information, contact your regional office of the Public Trustee or the Public Guardian.

GUARDIANSHIP

The Act considers separately guardianship of the Dependent Adult and trusteeship of the Dependent Adult. It is important not to confuse the two. A guardian looks after the personal needs of a Dependent Adult. The guardian's specific areas of responsibility depend on the needs and capabilities of the Dependent Adult and may include assisting with decisions in living arrangements, education and training, employment or health care (to name a few) and any other decisions the judge considers important to the welfare of the Dependent Adult. If the Dependent Adult requires guidance and protection in some but not all personal matters, a "partial guardian" is appointed; if protection and guidance in all these matters is required a total ("plenary") guardian is appointed.

TRUSTEESHIP

The Dependent Adults Act also defines the need for partial or total trusteeship and gives the criteria for persons eligible for appointment as trustee. A trustee would look after the financial affairs of the Dependent Adult.

CERTIFICATE OF INCAPACITY

When a Dependent Adult has been a resident of those facilities specified in the regulations for any period of time, and two physicians are of the opinion that the person is unable to make reasonable judgements with respect to all or any matters regarding real or personal property ("the estate"), a Certificate of Incapacity may be issued.

One of the signing physicians must then notify The Public Trustee and mail the Certificate of Incapacity to:

(1) The Public Trustee

(2) the guardian of the Dependent Adult or, if there is no guardian, the nearest relative living in Canada

(3) The Public Guardian.

Upon issue of a Certificate of Incapacity, The Public Trustee becomes the trustee of the estate of the Dependent Adult. Certificates of Incapacity are not issued when a Dependent Adult is subject to a Trusteeship Order.

RIGHTS OF THE DEPENDENT ADULT WHEN CERTIFICATE OF INCAPACITY HAS BEEN ISSUED

Upon receipt by The Public Trustee of a Certificate of Incapacity, The Public Trustee shall give a written statement to:

(1) the Dependent Adult

(2) the guardian of the Dependent Adult or, if there is no guardian, the nearest relative living in Canada

(3) The Public Guardian

containing the following information:

(4) a statement to the effect that a Certificate of Incapacity has been issued

(5) an explanation of the effect of the Certificate of Incapacity

(6) a statement as to the Dependent Adult's right to an appeal to an appeal panel for termination of the Certificate of Incapacity.

If the Dependent Adult, the guardian or nearest relative (as the case may be) is unable to understand the written statement, the Public Trustee must, by whatever means possible, ensure that the statement is completely understood.

Where no family member nor private individual will undertake guardianship or trusteeship for a Dependent Adult, the Public Guardian or Public Trustee must apply to the court to become that person's partial or total guardian, or trustee. The Public Guardian would then be charged with looking after the personal needs of such a person, and the Public Trustee would then be charged with administering the financial affairs of this person.

The Citizenship Act

The Citizenship Act became effective February 15, 1977. In general, you are a Canadian citizen if:

(1) you were born in Canada or

(2) you were born outside of Canada after the present Citizenship Act came into force and at the time of your birth one of your parents, other than a parent who adopted you, was a citizen or

(3) you were born outside of Canada and became a Canadian citizen under the present act or former legislation.

An alien cannot acquire citizenship by marrying a Canadian citizen, nor can a Canadian citizen lose Canadian citizenship by marrying an alien. This could have occurred under legislation prior to January 1, 1947.

An adult must apply for citizenship on his/her own behalf. A child's guardian may make application for citizenship on behalf of the child. A child of 14 years or over must countersign the application. That child will also be required to take the citizenship oath.

To be granted Canadian citizenship, you must:

(1) be 18 years of age or older

(2) have been lawfully admitted to Canada for permanent residence and have lived in Canada for three of the four years immediately preceding your application for citizenship. Only the four-year period immediately prior to applying for citizenship may be considered. The period of residence is calculated as follows:

  (i) one half-day for each day of residence in Canada before the date of becoming a Landed Immigrant

  (ii) one day for each day of residence in Canada after the date of becoming a Landed Immigrant.

(3) have an adequate knowledge of English or French, the official languages of Canada

(4) have some knowledge of Canada and of your rights and duties as a Canadian citizen. (It is sufficient to have a general knowledge of the political system, the geography and the history of Canada.)

(5) not be under a prohibition

(6) take the Oath of Citizenship.

Special Citizenship Courts are located in Edmonton and Calgary. Canadians may file applications for proof of citizenship with their nearest court or with the Registrar of Canadian Citizenship, Department of the Secretary of State, Ottawa, Ontario K1A 0M5. A certificate will be forwarded to the applicant. Non-Canadians must file their applications with a court either in person or by mail. Applications of all people of all national origins will be treated equally.

Use of Names

A person may use any names s/he wishes to use as long as it is not done for the purpose of fraud. In order to legally change a name, regulations contained in *The Change of Name Act* must be carefully followed.

Upon marriage, a woman is not obliged to take her husband's surname. This practice has been followed almost as though it were required by law, but it is in fact only a matter of cultural and social custom. After her marriage, a woman may continue to use her maiden name as before. Her children cannot be registered in her name. They must be registered at birth under her husband's name, or under a hyphenation of both parents' names. The order in which the combined names appear is optional. The child's name on a birth certificate can be changed later only with the consent of both parents or by a court order.

A woman who has adopted the custom of using her husband's surname may revert to her maiden name without going through the change of name procedure. In the case of a divorced woman reverting to her maiden name, her children will retain the name under which they were registered.

The child of an unmarried woman must be registered under the name of the mother, or, upon a joint request by both parents, under the name of the person acknowledging himself to be the father, or a hyphenation of both.

THE CHANGE OF NAME ACT

Subject to *The Change of Name Act*, any person may apply to change a given name or surname through the Director of Vital Statistics, Alberta Social Services and Community Health.

An application for a change of name may be made only by a person who is 18 years of age or older and who is a resident of Alberta. A person may not apply to change the name of a child who is 12 years of age or older without the child's consent.

A married person who applies for a change of surname shall also apply for a like change of the surname of his/her spouse and each of their children. A married person may not apply to change the name of the spouse or their children without the spouse's consent.

A widowed mother who has remarried requires the consent of her present husband, to make application to change the surname of her child/ren (also the child/ren of her deceased spouse) to his.

A woman whose marriage has been dissolved and who remarries may apply to change the surname of a child of the dissolved marriage of whom she has lawful custody, to the surname of her husband. The consent of her husband, as well as that of her former husband, is required. A court order may be obtained to dispense with that consent in some cases.

A person whose marriage has dissolved and who has lawful custody of a child from that marriage may, with the consent of the other parent of the child, if living, apply to change a given name or surname of the child to the applicant's surname or, if the applicant is also applying for a change of surname, to the proposed name.

People living together in a common-law relationship may not apply to have the same surname.

Wills and Estates

MAKING A WILL

A will should be made in contemplation of life. When properly prepared, it can be the key to true enjoyment of your property while you are alive, as it only takes effect upon your death. Property devolves (passes) on death in many ways: joint tenancy, contract (life insurance), deed, gift, *The Intestate Succession Act*, *The Dower Act*, and by will. Either your will or *The Intestate Succession Act* will decide how your property will devolve other than by the aforementioned methods.

WHY HAVE A WILL?

It is wise to have a will, but some people need convincing as to its importance. Without a will there is no personal direction as to disposal of the person's estate after death. Whether possessions are few or many, most people have an idea regarding how they would like to dispose of them. For example, Mrs. Smith may want her daughter to have her jewellery. Without explicit directions in a will, no one really knows this. Practically speaking, where there is a will, less time and cost is involved. Intelligent planning avoids excess estate taxes and distributes the estate quickly and efficiently to the beneficiaries of your choice.

The Survivorship Act must also be considered. When two or more persons die in circumstances rendering it uncertain which survived the other, the younger is presumed to have survived the older. If the wife is younger and she is without a will, she has died intestate. For example, if the husband's property all goes to the wife's estate, it is added to her separate property and passes to her next of kin. This possibility can be eliminated with a common disaster clause, providing an alternate list of beneficiaries if the spouse does not survive by certain number of days (usually thirty).

WHO CAN MAKE A WILL?

Any mentally competent person 18 years of age or older may make a will. Persons less than 18 years of age can make a will where that person is or has been married, is a member of the Armed Forces, or a mariner or seaman. Wills made by persons suffering from delusions affecting the nature, value or ownership of assets, or warping the natural affections, may not be recognized. Either fraud or undue influence may also render a will invalid.

A will may be revoked at any time, either by rescinding the old will, making a new one, or by deliberately destroying the old one. A person's will is normally revoked upon marriage, unless the will specifically states that it is being made in contemplation of that particular marriage. It may also lose its effectiveness, wholly or partially, by the death of persons named as beneficiaries or if the person, while living, disposes of property which had been mentioned in the will.

Wills are changed either by making a complete new will or by making a codicil (a document in the form of a will amending the original will).

Generally speaking, once made, a will should be reviewed every five years, or sooner if circumstances change.

WHO TO SEE ABOUT DRAWING UP YOUR WILL

The person best qualified to draw up your will is your lawyer. Legal fees for this service vary, depending upon the complexity of the will. You should discuss the matter of fees in advance with your lawyer.

Your lawyer, banker or executor will keep a copy of your will in his/her possession. It is important to advise immediate members of your family where the original will is located (preferably in a safety deposit box or other fireproof storage). One hidden under the mattress may not turn up for 50 years, in which event your estate will have been divided by *The Intestate Succession Act*, with no regard to your recorded wishes.

Another alternative is to have your will deposited with the Clerk of the Court of Alberta Attorney General. A person wishing to do so must enclose the will or codicil in a sealed envelope for delivery to the Clerk of the Court, either personally or by someone specially authorized, to deposit it on behalf of the testator (person making the will). The will or codicil may not be removed, copied or inspected during the person's lifetime except by the person or, in some cases, by a solicitor (upon order of a judge) acting under the written authority of the person who made the will.

For further information on the deposit of a will of a living person, contact:

Clerk of the Court
Law Courts Building
Edmonton, Alberta
T5J 0R2

Telephone: 422-2200

It is wise to keep a copy with your important papers, and to list on each copy where the original will is being held.

If moving to another province or country, determine if the laws regarding wills are the same. For example, a holograph will is recognized in Alberta but not in all Canadian provinces.

WHAT ARE THE TYPES OF WILLS?

The ordinary form of will (called a solemn will) is signed at the end by the testator (maker) in the presence of two witnesses who must sign in the presence of the testator and each other. The witnesses must not be persons or spouses of persons who will receive anything under the terms of the will, and preferably should be younger and easily located.

Costly mistakes can be avoided if the will is executed in the lawyer's office. Beware of printed forms. Avoid amateur effort.

Another form of will recognized by Alberta courts is the holograph will. This is a will that is completely in the handwriting of the testator and needs no witnesses. Many other courts do not recognize a holograph will, so the person must be governed by the laws of jurisdiction in which the estate is situated. A holograph will is NOT RECOMMENDED except as a temporary measure.

Great care must be taken in wording a will to ensure that it has the legal effect intended, because when the time comes to give effect to it, the maker is not available to explain exactly what was meant. Remember, the will is to dispose of property acquired during the maker's entire lifetime.

Because of many legal problems involved, a will prepared by a person unfamiliar with the details of the laws relating to wills and the transmission of property, may be ineffective in disposing of the testator's property. For example, a provision that is of uncertain meaning or that may result in property being tied up for an indefinite period, may be invalid. In consequence, a will prepared by a person without full knowledge of the relevant laws is DEFINITELY NOT RECOMMENDED. A very high proportion of "home-made" wills cause unnecessary delay, uncertainty and expense.

HOW YOUR WILL DISPOSES OF YOUR PROPERTY

There are several ways to leave assets under a will, and Alberta law applies certain technical rules to the methods you choose.

The important consideration is to remember the alternatives available and the methods you have used in your will so that subsequent actions will not change the meaning or effect of the will.

For example:

(1) Father 'A' wants to leave his land to son William, the only child interested in farming. In his will, he directs his executors to rent the land, pay the net income to his wife for her lifetime, and on her death to transfer the land to William. After the will is made, the land is expropriated for a factory site and on the death of Father 'A' there is no land, only a house in the city and cash in the bank.

Without a new will to meet the changing conditions, William gets no interest in the former farmlands and the widow may get nothing from the income direction unless the residuary clause benefits William and the widow.

(2) My will provides, "I leave my grand piano to my daughter Katherine." This particular wording means that if I own a grand piano at death, my daughter Katherine will receive the grand piano. If I do not own a grand piano at death, Katherine receives nothing, no matter how talented she may be.

On the other hand, if my will reads, "I leave a grand piano to my daughter Katherine," then even if I did not own one at the date of my death, my executors would be obliged to buy a grand piano at the estate's expense and give it to my daughter Katherine.

(3) I wish my son to attend university or agricultural college and to provide an incentive I state in my will, "If at my death or within (blank) number of years thereafter my son John attends an Alberta university or agricultural college, then I leave the sum of $10,000.00 in trust to my executors to pay his tuition, board, lodging, books, etc., and upon graduation to pay the balance remaining to him for his use absolutely (or to someone else if he dies or fails to graduate)." This is a valid and enforceable bequest.

However, if I foolishly refuse to take legal advice and draw my own will which merely says, "I leave the sum of $10,000.00 to my son John, trusting that he will use this money to obtain a university degree or finish agricultural college in Alberta and farm land,

which his grandfather homesteaded, etc.," the Court would interpret this type of bequest as an absolute gift of $10,000.00 to son John, with no strings attached, and he would not be obliged to attend university or agricultural college or graduate therefrom.

As these examples illustrate, technical rules of interpretation are necessary to determine unforeseen circumstances. Your lawyer, aware of these rules, can assist you in the proper wording and alternatives available to provide for the probable changes in your particular circumstances.

OWNERSHIP TRANSFER BY WILL

Transfer by will has certain disadvantages, especially when it is used to transfer the family farm or business on to the next generation. These are:

(1) No one can predict when transfer by will is to take place. The result is a period of uncertainty regarding the transfer. This could extend to 30 or 40 years.

(2) A will can be changed by the maker at any time, providing the person is still mentally competent, so it is not a definite financial arrangement until made final by death and legal action through the probate court.

(3) Many times the parents making the will need money from the sale of the property to live on in their declining years. As their will does not furnish an income to them, they must alter the will to match their change of plans.

(4) The legal cost, and often tax obligations for the estate, will be larger if the will is used to transfer all the property than if the farm is sold to the heirs.

WHAT HAPPENS WHEN A PERSON DIES WITHOUT A WILL?

For people failing to make a will, the provincial government has made a will for them. Unfortunately, it cannot take into consideration the needs of each particular family and some unfair situations may result.

This "will" is called *The Intestate Succession Act*, details of which may be found in that section.

EXECUTORS AND ADMINISTRATORS

An executor is appointed under a will and has the right to act immediately upon death. An administrator may act only when appointed by a court and this may take months. Delay is usually caused by many factors, such as who will be the administrator, what are the assets of the estate, posting of a bond, etc. An administrator is required where there is no legally enforceable will or the executor in a will is dead, incapable, or refuses to act. Careful thought should be given to selection of an executor of your estate, and the matter should be discussed with the person you intend to appoint as to whether s/he would agree to act as an executor. For example, it would not be wise to appoint an executor much older than yourself, in case such person should predecease you, with resulting complications. To avoid additional costs of administration, your executor should be located in Alberta. For more detailed information regarding the responsibilities of an executor or administrator, request a free copy of *A Guide to Probate Procedure* from the Alberta Women's Bureau.

The services of a trust company or the Public Trustee should be considered because, through their experience in estate planning, they can offer advice which could result in substantial tax savings, as well as avoidance of possible administrative problems. The fees payable to the executor or administrator are the same regardless of whether a trust company, the Public Trustee, or an individual is named.

Executors and administrators have three primary duties in handling an estate:

(1) to gather all assets of the estate

(2) to pay all legal debts, taxes and expenses of the estate

(3) to pay out the balance of the estate in accordance with the terms of the will, or under provisions of *The Intestate Succession Act*, as the case may be.

They may enter into possession of the estate's property, bring legal action against debtors of the estate, enforce demands, give effective receipts and discharges, pay the testator's debts, and in effect perform all directions of the will or *The Intestate Succession Act*. The first step after receiving grant of probate or administration is that of filing income tax and completing succession duty returns, if any.

Executors may renounce their appointment at any time.

Since an administrator is appointed by the court, a bond equal to twice the value of the estate must be posted. There is a priority of persons who may be selected by the court as an administrator. In order of importance they are: husband, wife, father, mother, child, brother, sister, uncle, aunt, nephew, niece, and other next-of-kin. This priority list is strictly adhered to by the courts, and applicants applying for a grant of administration of an estate must fulfil certain conditions if they wish to vary it. Where there is uncertainty as to the person entitled to a grant of administration, or undue delay exists, the court has power to grant administration to the Public Trustee or some other appropriate person.

GUARDIANSHIP (Minor Children and Estates)

In Alberta we may, by will, appoint a guardian of the person of our minor children (under 18 years of age). This guardian is the person you have selected, with his or her consent, to act as a substitute parent. Care should be given to seeing that the new environment will be as close to your present home as possible, in religion, discipline, health and education. Grandparents should not automatically be appointed as guardians. It may be advisable to allow them to retain the grandparent relationship with the children. Orphaned children will need their grandparents as well as substitute parents. The courts will approve the selection, as long as someone selected is not deemed by the court to be an unfit guardian.

One of the most important reasons for making a will is to appoint guardians for your minor children. Some of the most heart-rending court cases on record are those where a number of relatives apply for guardianship of the person of the orphaned children. It divides the family (perhaps forever), upsets the children who have already been through a great deal, and costs the estate money through the court costs involved.

Matters relating to the child's separate estate or inheritance are determined by the trustee named in the parents' will (if any), the Public Trustee, or a trustee of the infant's estate appointed by the District Court after posting a bond.

Upon a person's death, in addition to making provision through a will for the guardianship of children and for the appointment of an executor, a will may appoint a trustee to care for the assets of an estate over a period of time. Often, although they need not necessarily be, executors or guardians are also appointed trustees of an estate's property to the benefit of any children, usually minors. The terms and conditions of a trust can be established by a person's will or other trust instrument. A trust can be created for the benefit of anybody but most commonly is provided for minor children.

Common duties of a trustee are to maintain the trust property, to invest in a reasonable and proper manner any income, and generally to enhance and accumulate the wealth of the trust property to the advantage of the beneficiary. In addition, *The Trustee Act* imposes strict limitations and safeguards upon the conduct of a trustee. Sections 4-8 limit a trustee's investment power to more secure types of investments authorized by the Act or by a court.

In the event the trust property is held for the benefit of a minor, *The Trustee Act* makes provision for a trustee to provide monies from the trust for the maintenance and education of a minor, or other beneficiary, where that person is otherwise insufficiently provided for. Although *The Trustee Act* and the Common Law impose strict duties of trust and care on a trustee, equal care should be taken in selecting a trustee for the minor's property as with selection of a guardian for that minor.

A trustee is entitled to fair and reasonable remuneration for services.

See also *The Dependent Adults Act* on page 29.

The Intestate Succession Act

When a person dies without a will or leaves property that is not disposed of by a will, *The Intestate Succession Act* provides how the estate is to be distributed.

Effective January 1, 1976, if a person leaves an estate with a net value of less than $40,000, the entire estate goes to the surviving spouse. Where the net value of the estate exceeds this amount, the surviving spouse receives $40,000 plus interest at five per cent per annum until paid, and the remainder is divided:

(1) if there is one child, half to the surviving spouse and half to the child

(2) if there is more than one child, a third to the surviving spouse and two-thirds divided equally amongst the children.

If a son or daughter is dead but survived by children, they receive what would have been the parent's share. Where there are no children, the surviving spouse receives the entire estate.

Where there is no surviving spouse or descendants, the estate goes to the deceased's nearest kin, who are determined in the following order: parents (or the surviving one parent); brothers and sisters in equal shares (or if dead, their children will inherit their share); surviving nephews and nieces; grandparents; aunts and uncles; cousins.

Where no heirs survive the deceased person, the estate goes to the Crown in right of Alberta under *The Ultimate Heir Act*.

The Social Care Facilities Licensing Act

This Act is designed to require certain licenses to be obtained before persons can carry on the business of providing certain social care facilities. These facilities would include a place of care for persons who are aged or infirm or who require special care, an institution or shelter for children, a hostel or other establishment operated to provide accommodation and maintenance for unemployed or indigent persons. A contract nursing home under *The Nursing Homes Act*, a home or unit under *The Senior Citizens Housing Act* or an approved hospital under *The Hospitals Act* are not included under *The Social Care Facilities Licensing Act*.

No person shall operate a social care facility providing accommodation or care for four or more persons unless a subsisting license issued by the Director under this Act, is held. In addition, inspectors are appointed to inspect the social care facilities. Applications for day care centres fall within the Day Care Regulations, which were made under this Act, to set up standards for day care facilities. Anyone wishing to set up or investigate a day care centre should refer to these regulations directly.

The Criminal Injuries Compensation Act

By this Act, the Province has set up a Crimes Compensation Board so that victims of crimes of violence may claim compensation. Claims may be made by:

(1) anyone injured as a direct result of a crime of violence, or as a direct result of endeavouring to prevent a crime or make an arrest or in assisting a peace officer in doing so

(2) the dependents of anyone who was killed as a direct result of any of the circumstances outlined in (1) above.

Injury includes mental shock and anyone injured in Alberta may make a claim.

Compensation is paid for pecuniary loss, in the main loss of wages, ambulance cost and medical and dental bills, and this includes future loss of wages when the injury has caused permanent disablement. Compensation is also paid for the support of a child born as the result of rape.

Compensation for damage to property (including stolen money) cannot be awarded, with two exceptions: damage to clothing worn at the time and, damage caused by a peace officer in the performance of his duties.

Compensation for disfigurement and pain and suffering caused by the injury can only be awarded if the injury occurred while the victim was preventing a crime or making an arrest or assisting a peace officer to do so. The maximum award is $10,000.

The injury or death and how it occurred must have been reported to the police as soon as possible after it occurred. The claim for compensation must be submitted within one year of the injury or death, and the claimant must be prepared to co-operate in investigating the crime and identifying the criminal and in providing any information the Board may require, including a medical examination.

Any money received by reason of the injury from the person who caused it, or from social assistance, Workers' Compensation or insurance policy will be deducted from the amount of an award by the Board.

For full information, contact:

The Crimes Compensation Board
9833 - 109 Street
Edmonton, Alberta
T5K 2E8

Telephone: 427-7217

The Debtors' Assistance Act

In 1943, *The Debtors' Assistance Act* established the Debtor's Assistance Board, which provides a counselling service for families with financial problems.

Services provided by the board include:

(1) advice on family finance and budgeting

(2) assistance in a proceeding in which maintenance or alimony payments are settled. (The Board must provide the Court, on its request, with a report as to the finances of the parties involved in this proceeding.)

(3) information on the effects and consequences of garnishees, seizures or foreclosures

(4) information on alternatives to personal bankruptcy

(5) help with bringing debts together under the Orderly Payment of Debts provisions (see below)

(6) advice as to the obligations which should or should not be included in the consolidation plan.

Part X of *The Bankruptcy Act* allows a debtor to consolidate certain debts and pay a set sum each month to the Clerk of the Court under a Consolidation Order. These funds are then distributed to the client's creditors. The creditors involved are paid in full over an extended time period.

Bankruptcy Act

This federal statute defines the conditions and requirements of bankruptcy which is a legal state and process. It involves the applying of assets proportionately to the debts owed by the bankrupt with the objective of discharging each debt fully. It is different from insolvency, which is a state in which the debtor has insufficient assets to meet all debts.

A creditor may institute bankruptcy proceedings by petitioning the Court. As well, a debtor can personally declare bankruptcy through the use of a Trustee. Bankruptcies are handled through the Federal Department of Consumer and Corporate Affairs and inquiries should be directed to the nearest office.

Some points to consider regarding bankruptcy are:

(1) some debts such as taxes are not discharged through bankruptcy.

(2) bankruptcy is a legal proceeding and final resolution is through the courts.

(3) assets may be kept by the debtor to the extent allowed by the *Exemptions Act*.

(4) there are fees which must be paid to the Trustee.

(5) a discharge of debts is not automatic and the debtor may be ordered to make payments prior to being discharged.

Personal Debt Counselling Services are also offered through Alberta Consumer and Corporate Affairs which do not entail declaring bankruptcy. Budgeting, counselling and repayment programs are the major services offered by the provincial department. Inquiries should be directed to the nearest Regional Office.

The Alberta Securities Commission

The Alberta Securities Commission is a two-tiered, administrative and quasi-judicial body created by *The Securities Act of Alberta*. The mandate of the Commission, as expressed in the Securities Act, is to regulate activity in the investment community. The scope of the legislation is limited to "securities" which includes, but is not limited to, traditional stocks and bonds.

Traditionally, the purpose of the Commission has been considered to be solely that of investor protection. However, the Commission must also regulate with a view to promoting the efficient operation of capital markets.

Regulation of the investment community is achieved by requiring the registration of securities and of all persons or companies which trade in securities. In addition, the Securities Act contains provisions designed to ensure that the investing public has access to pertinent investment information and is protected, through civil liability provisions and quasi-criminal sanctions, where fraud or misrepresentation occurs in relation to that information.

For further information about the Securities Act or the Commission, contact:

Edmonton Office
10th Floor, Capitol Square
10065 Jasper Avenue
EDMONTON, Alberta
T5J 3B1

Phone: 427-5201

Calgary Office
9th Floor, J.J. Bowlen Building
620 - 7th Avenue S.W.
CALGARY, Alberta
T2P 0Y8

Phone: 297-6454

Landlord and Tenant Act

When renting an apartment or other accommodation, one is often required to sign a lease. This lease is a contract between the landlord and tenant and contains whatever provisions are agreed upon between them. Among other things, the lease should state the amount of rent, length of the lease, requirements for giving notice, the amount of the damage deposit and its conditions, and specified obligations of the landlord and tenant. Even if there is no written lease, the following rules govern residential tenancies in Alberta.

NOTICE

A written notice of termination of a monthly tenancy must be given by the landlord to the tenant not less than three full tenancy months prior to the day on which it is specified to be effective.

RENT INCREASE

Written notice of increase of rent must be given by the landlord at least 90 days before the increase is to take effect.

SECURITY DEPOSIT

There is a maximum limit of one month's rent that may be charged as the security deposit. The landlord is required to pay interest at the rate of 12% per annum effective January 1, 1982 and for any interest due prior to that date the rate is 6% per annum. As of January 1, 1984, interest should be paid at the rate of 8% per annum for all security deposits held after that date. The landlord must return the security deposit; or if deductions have been made the balance, within ten days of the tenant vacating the premises, accompanied by a Statement of Account showing the particulars of the deductions. If the landlord is unable to obtain the accurate cost of the repair, an estimate may be given, but a final accounting must be given to the tenant within 30 days of the tenant having vacated the premises. To prevent disputes with the landlord over the security deposit, the tenant should make a list of everything that is damaged when moving in and have the landlord sign it.

ENTRY BY THE LANDLORD

The landlord may not enter rented residential premises unless the tenant is given a written notice of at least 24 hours before the time of entry. This notice should name a reasonable time of entry.

The following circumstances are exceptions:

(1) The landlord may enter the premises if there is an emergency or the tenant has abandoned the premises.

(2) The landlord may enter if permission is given by the tenant at the time of entry.

LOCKS AND SECURITY DEVICES

Neither a tenant nor landlord may add to or change locks on doors of the premises without the consent of the other. However, a landlord may do so if a key is made available to the tenant as soon as the addition or change is made. A tenant may, without consent of the landlord, install a security device that is capable of being used only while a person is inside the premises and that can be installed and removed without damage to the premises, or will remain in the premises and become the landlord's property when the tenant moves.

TENANCY AGREEMENT

A tenant who has signed and returned a written tenancy agreement to the landlord must be provided with a copy of the tenancy agreement within 21 days of its return to the landlord. A tenant may withhold payment of rent until a copy of this tenancy agreement is provided.

ABANDONED GOODS

Goods left on the premises by a tenant who has abandoned the premises, or vacated the premises on expiry or termination of the tenancy agreement, may be sold by a landlord who reasonably believes the goods have a total market value of less than $300.00. Goods of value over $300.00 may be sold by the landlord after storing them on behalf of the tenant for 60 days.

Money received by the landlord on the sale of tenant's goods shall be paid to the Provincial Treasurer through one of the Regional Offices of Alberta Consumer and Corporate Affairs, after deducting the landlord's costs of storing and selling the goods. The money will be retained on behalf of the tenant for one year, after which the tenant has no further claim.

AS PROBLEMS ARISE

If you experience problems in a landlord/tenant situation, find out if your city or town has a Landlord or Tenant Advisory Board. They may be able to give you the necessary assistance or guidance.

If you have problems getting your damage deposit back, get advice from the Provincial Court, Small Claims Division.

Property Holding

A piece of property may be owned by one or more persons. Where more than one person owns the same property, they may own it as joint tenants or as tenants in common.

Joint tenancy is commonly used by married couples in owning their home. Each has an equal interest in the property and it cannot be sold or mortgaged without the consent of both owners. If one of the owners dies, then his/her share passes on to the other owner when proof of death is filed with the Land Titles Office. The owner of a share of land in a joint tenancy cannot dispose of it by will, unless the joint tenancy has been broken.

"Tenants in common" means that the owners have a share in the property. When one of the partners dies, the other partner does not automatically receive the deceased's share. The share is inherited by the deceased's next-of-kin, or goes to whoever is named in the will.

The Expropriation Act

As modern society grows more complex, the owner of property may find that a government requires all or part of the land for a public purpose. Where agreement cannot be reached, expropriation takes place. In 1974, Alberta passed *The Expropriation Act*, which provides procedures, protection and important rights to the property owner who is caught up in the expropriation process. The Alberta Land Compensation Board was created to settle compensation in such cases and to see that the owner is justly and fairly treated.

For further information, contact:

Alberta Land Compensation Board
#202 Lavalin Building
909 Fifth Avenue S.W.
Calgary, Alberta
T2P 0N8

The Builders' Lien Act

The Act provides a special lien, not available at common-law, to parties who provide work or materials in respect of an improvement on land. This Act is of greatest benefit to contractors and sub-contractors in the construction field. If the owner fails to pay for work completed, it gives the prime contractor a 100% lien on the land that is improved. Sub-contractors or sub-suppliers are given a class lien securing 15% of the work done under the prime contract.

A lien is the right to hold the property of another as security for the performance of an obligation such as the payment of a debt.

The sub-contractor's lien is secured by a lien fund. This is created by the requirement, imposed on the owner, to hold back at least 15% of the money owed for the work done from time to time. If more than 15% is held back, the entire amount must be held in the lien fund.

It is to the benefit of prime contractors or sub-contractors, to protect their interests, by registering their liens at the Land Titles Office within 35 days of the date the work is completed. They are then required to commence the law suit on the lien and register a certificate of *lis pendens* at the Land Titles Office within 180 days of registration of the lien. If these deadlines are not met, the prime contractor or sub-contractor will lose rights granted under the Act, and will be limited to the remedies at common-law.

Contracts

A contract may be made verbally (such as hiring a mechanic to repair your car) or in writing. A good contract leaves nothing in doubt, and contains all relevant information. It should be clear and concise and no clause should be vague. Lines should be drawn through any blank spaces on the written contract so that nothing can be added after the contract has been signed. If you are not in agreement with a point on the contract, a line should be drawn through the unwanted lines and the appropriate words substituted. You should also make sure that the other party to the contract initials the change. It is unwise to enter into a contract on a Sunday (see *The Lord's Day Act*).

For your own protection, all contracts should be in writing and should not be signed unless the contents, including the fine print, are fully understood. Before signing an important contract, it is wise to have it reviewed by a lawyer.

If any of the provisions of a contract are not met, you can be taken to court for "breach of contract" which could result in your having to pay damages.

The Lord's Day Act

This is a federal statute which can be altered by the provinces, and in some cases the municipal government, so the following does not necessarily apply to the center in which you live.

Entering into some contracts on Sunday (twelve o'clock midnight Saturday to twelve o'clock midnight Sunday) is illegal. You may write a cheque on Sunday as long as it is in conclusion of business begun during the week. The same holds true for the signing of contracts. To be safe, one should not sign any contract on a Sunday, as it is always possible for an unscrupulous business person to try to cancel it.

The provincial *Sale of Goods Act*, Section 5, supplements the federal *Lord's Day Act* and specifically makes any transaction for the purchase of personal property on a Sunday utterly void.

The Employment Standards Act

On May 1, 1981 *The Alberta Labour Act*, 1973 was replaced by two separate acts — *The Employment Standards Act* and *The Labour Relations Act* which, as suggested by their titles, contain provisions pertaining to employment standards and labour relations respectively. *The Employment Standards Act* does not apply to individuals covered by *The Public Service Employee Relations Act* and employees who are members of a municipal police force appointed pursuant to *The Police Act*, 1973. Also, certain provisions of this act do not apply to farm labourers and domestic workers.

The Employment Standards Act has provisions for regulating such things as hours of work, minimum wages, holiday pay, overtime employment of adolescents and young persons, and the well-being of employees. The following are a few of the regulations to be found in this act.

HOURS OF WORK

The hours of work in any one day shall be confined within a period of 12 hours, including breaks. Generally, an employee's work should not exceed 8 hours in a day and/or 44 hours in a week, whichever is the greater before overtime is required. There are specific regulations governing extended hours of work in certain industries.

An employer may request a permit from the Director of Employment Standards authorizing extended hours of work if it can be shown that it is imperative that the hours of work be extended beyond 12 hours per day.

OVERTIME AGREEMENTS — ALTERED OR COMPRESSED WORK WEEK ARRANGEMENTS

An employer and employee may enter into an altered or compressed work week schedule in which the employee works additional daily hours but is given time off with regular pay that is at least equal to the number of overtime hours worked, in place of overtime pay. These arrangements are considered Overtime Agreements and must be entered into in writing between the employer and employee affected.

Alternatively, the Director, Employment Standards may issue a permit which contains similar features following submission of a written application.

GENERAL HOLIDAY PAY

There are eight general holidays each year: New Year's Day, Good Friday, Victoria Day, Dominion Day, Labour Day, Thanksgiving Day, Remembrance Day and Christmas Day.

An employee will be paid a regular day's pay for a general holiday if:

(1) The employee worked 30 days in the 12 months preceeding the general holiday for an employer.

(2) The general holiday occurs on the employee's regular work day.

(3) The employee worked the last scheduled day before the holiday and the next scheduled day after the holiday.

If the place of business is closed and the employee is not required to work, the employee is to receive a regular day's pay.

A qualified employee who is required to work on a general holiday will receive a regular day's pay, plus, payment of one and one-half times the regular wage for all hours worked on the holiday, or a regular day off with pay not later than his/her next annual vacation.

Employees in the construction industry, with the exception of an office worker, is compensated for general holidays by receiving 3.2 per cent of their gross regular earnings on December 31, or on termination of employment, whichever occurs first.

STATEMENT OF EARNINGS

An employer is required to keep a record of each employees' name, date of birth, age, address, hours of work, wages paid, overtime paid, time off in lieu of overtime provided and taken, vacation and general holiday pay and money paid in place of notice of termination of employment, as well as the amount of each deduction from the wages, overtime pay or entitlements of the employee and the purpose for which each deduction is made. The employer must furnish the employee with a formal statement of earnings and deductions at the end of each pay period.

FAILURE TO PAY WAGES

The Employment Standards Branch will accept a formal claim from an employee when the employer has failed to pay all wages and entitlements. If the claim is valid, the employer is required to pay the employee wages and entitlements due the employee. An employer can be charged under the provisions of the *Employment Standards Act* when failing to comply with the provisions of the Act.

VACATION

Employees are entitled to a minimum of two weeks' vacation with pay after 12 months of employment:

(1) the monthly paid employee receive vacations with pay based on their monthly salary

(2) employees paid other than by the month are entitled to four per cent of their regular wages for the 12 months of employment

(3) for a lesser period of employment than 12 months, four per cent of regular earnings shall be paid on termination

REGULATIONS CONCERNING ADOLESCENTS AND YOUNG PERSONS

Adolescents aged 12 years and under 15 years of age may be employed in any of the following occupations:

(1) delivery persons of small wares for retail stores

(2) clerk or messenger in an office

(3) clerk in a retail store

(4) delivery person of handbills or flyers.

They are not allowed to be employed between 9:00 p.m. and the following 6:00 a.m.

The Director may approve adolescent employment in occupations similar to those in items 1-4 specified above.

Young persons (defined as 15 years of age and under 18 years of age) employed between 9:00 a.m. and 12:00 midnight in business establishments such as service stations, grocery stores, food outlets, restaurants, motels, and hotels must be under the supervision of one or more adults over the age of 18 years, and cannot be employed in these businesses between 12:00 midnight and 6:00 a.m.

Young persons may be employed between 12:00 midnight and 6:00 a.m. in establishments such as hospitals, manufacturing plants, refineries, pulp mills and nursing homes, but must be in the continous presence of one or more adults and the employer must have the written permission of the young person's parent or guardian.

MATERNITY LEAVE

A pregnant employee who has been employed by her employer for a period of at least 12 months is entitled to maternity leave without pay consisting of:

(1) 12 weeks immediately preceeding the estimated date of delivery or such shorter period as the employee may request

(2) the period, if any, between the estimated date of delivery and the actual date of delivery, and

(3) a period not exceeding six weeks immediately following the actual date of delivery.

An employee who wishes to resume her employment on the expiration of maternity leave shall be reinstated in the position she occupied at the time her maternity leave commenced, or be provided with alternative work of a comparable nature.

The provisions of the Act do not apply to employers or employees if there is a custom, practice or agreement providing for maternity leave conditions or benefits which are more favorable to the employee than those contained in the act.

For further information regarding provisions of *The Employment Standards Act* contact the nearest Employment and Standards branch of Alberta Labour at the location nearest you. Offices are located in:

Edmonton
Medicine Hat
Grande Prairie
Edson
St. Paul
Red Deer
Calgary
Lethbridge

The Occupational Health and Safety Act

The Occupational Health and Safety Act is an important piece of legislation designed to improve the standard of health and safety in Alberta's workplaces.

The Occupational Health and Safety Division is responsible for administering the Act by:

(1) helping management and labour work together

(2) setting minimum health and safety standards

(3) making routine inspections of work sites

(4) following up on requests by employers and/or employees for special inspections.

(Requests may be made anonymously by phoning 427-8848).

Workers, management and government have rights and responsibilities which must be practised in order to help save lives and preserve good health.

For more information about *The Occupational Health and Safety Act*, contact:

Alberta Occupational Health and Safety Division
Workers' Health, Safety and Compensation
5th floor Donsdale Place
10709 Jasper Avenue
Edmonton, Alberta
T5J 3N3

The Workers' Compensation Act

The Workers' Compensation Act of Alberta is intended to protect and assist workers who suffer disablement due to accidents or disease arising out of and in the course of their employment.

The Act has been designed to ensure the prompt adjudication of workers' claims. It also eliminates the uncertainties and expense of legal action which prior to the establishment of the Workers' Compensation Board, was the only way a worker might obtain compensation.

ADMINISTRATION OF THE ACT

The Act is administered by an independent board known as the Workers' Compensation Board.

Employers under the Act are required to pay the full costs of compensation on a collective responsibility basis. It is unlawful for any employer to deduct from an employees' wages any part of any sum payable to the board.

Every case is adjudicated on its own merits. However, there is nothing to prevent the board from reconsidering any matter dealt with previously or rescinding, altering, or amending any decision made.

RIGHT OF APPEAL

Although the right of appeal to the board is available to any employer or worker, the Act provides that there can be no appeal to the courts regarding a board decision.

COVERAGE UNDER THE ACT

The Act applies to employers and workers in all industries in Alberta with the exception of those designated in the regulations as being exempt.

Employees of most principal industries, trades or businesses, as well as public servants, are covered under the Act. Enterprises which do not come within the scope of *The Workers' Compensation Act* may make voluntary application for coverage. Acceptance of such applications are at the discretion of the board.

ENTITLEMENT TO BENEFITS

To determine whether an injured worker is entitled to compensation, the board must have complete details of the accident. Application forms for workers, and report forms for employers and physicians, are supplied by the board. Properly completed, these forms provide the necessary information and should be submitted without delay to ensure prompt payment of compensation.

A worker is entitled to compensation for personal injury as a result of an accident arising out of and in the course of employment. The act does not require the board to pay compensation for degenerative conditions or congenital illness.

If an accident disables a worker for longer than the day of the accident, the employer shall pay compensation to the worker in respect of the day of the accident. The board will pay compensation to the worker in respect of every day after the day of accident to which he or she is entitled.

BENEFITS

The amount of compensation paid is 90 per cent of net wage (as determined by the regulations to the *Workers' Compensation Act*), based on gross earnings up to a maximum of $40,000 per annum. Compensation for lesser earnings is calculated at 90 per cent of net earnings.

The Workers' Compensation Board provides modern physical and vocational rehabilitation facilities which provides specialized treatment designed to restore as quickly as possible the physical capabilities of injured workers and to help them return to the work force as soon as possible.

When permanent disability results from a compensable accident, a pension based on the amount of the disability and the worker's average yearly net earnings at the time of the accident will be awarded. If death results from such injury, a worker's actual dependents are entitled to compensation payments provided under the act.

W.C.B. OFFICES IN ALBERTA

Workers' Compensation Board offices are presently located in:

Edmonton	Calgary
Red Deer	Lethbridge
Medicine Hat	Grande Prairie

For further information contact:

The Workers' Compensation Board
Media and Communications Services
9912 - 107 Street
Edmonton, Alberta
T5J 2S5

Phone: 427-0852

Consumer Affairs

The municipal, provincial and federal governments all have a hand in consumer affairs; the difference between them is mainly jurisdictional.

Alberta Consumer and Corporate Affairs, through its six Regional Offices and two sub-offices, licenses trades, businesses and salespeople, handles consumer complaints, investigations and inquiries, operates family financial counselling services, and offers counselling services to groups interested in establishing a co-operative business venture. The education program provides self-help materials to advise consumers of their legal rights and responsibilities; a list of 60 free publications can be obtained from the offices located in:

Peace River	Red Deer
Fort McMurray	Calgary
Edmonton	Lethbridge
Grande Prairie	Medicine Hat

or from Box 1616, Edmonton, Alberta T5J 2N9

The federal Department of Consumer and Corporate Affairs has jurisdiction over such things as hazardous products, weights and measures, packaging and labelling. It also handles consumer complaints and inquiries.

In addition to these departments, there are others dealing with problems in the consumer protection area. One example is the federal Health Protection Branch which is involved in programs aimed at protecting the public from health hazards in foods, drugs, cosmetics, etc.

For assistance with problems or inquiries, contact either the federal or provincial Department of Consumer and Corporate Affairs. Both departments extend mutual co-operation and will direct your problem or inquiry to the correct source of information.

THE DIRECT SALES CANCELLATION ACT

A buyer who enters into a sales contract with a door-to-door sales representative may cancel a contract by giving a notice of cancellation:

(1) not later than the fourth day after receiving the sales contract whether it is received by personal delivery or by mail

(2) not later than one year after the date on which the contract was received if:

(a) all the goods or services are not supplied within 120 days of signing the contract if no date for delivery or performance was stated in the contract

(b) the direct selling business was not licensed when the sale was solicited, negotiated and concluded

(c) the contract does not contain the cancellation notice in the prescribed form that is at least as prominent as the rest of the contents of the sales contract

(d) the buyer did not receive a copy of the sales contract by personal delivery or by mail within 10 days after the date it has been signed

(3) not later than 180 days after the date on which all the goods or services are to be supplied under the sales contract where:

(a) the date is ascertainable but the goods or services are not supplied within 30 days after that date

(b) where the seller offers to give a rebate or discount to the buyer in exchange for names of prospective purchasers or otherwise assists in making a sale to another person, and the earning of the rebate or discount is contingent on the occurrence of an event subsequent to the time the buyer agrees to buy

(c) the sales contract is not signed by the buyer

(4) a notice of cancellation should be mailed or delivered to the sales representative or business named in the contract, or if no address is shown in the contract, to any sales representative at any other known address of the seller. If the above are all unknown, notice of cancellation should be forwarded, along with a full explanation to:

Alberta Consumer and Corporate Affairs
P.O. Box 1616
Edmonton, Alberta
T5J 2N9

THE MOTOR VEHICLE ACCIDENT CLAIMS ACT

This Act establishes a fund to satisfy claims for injuries arising from motor vehicle accidents which occur in Alberta. The claim may be for damages as a consequence of death, bodily injury or property damage exceeding $100. The Act permits claims in circumstances such as hit-and-run where the driver causing the damage has left the scene and cannot be identified or located. It also provides a mechanism for plaintiffs who have obtained a judgment to receive payment from the fund, where the defendant has not satisfied the judgment.

In most cases the claims against the fund are handled through the fund office and the courts are not involved. If a court action occurs, the Administrator of the fund becomes the "defendant" in an action and the plaintiff assigns the right to sue the real defendant over to the Administrator. The latter may pursue a separate action against the real defendant if known. For further information contact:

The Motor Vehicle Accident Claims Fund
10125 Princess Elizabeth Avenue
Edmonton, Alberta
T5G 0X9

Telephone: 427-8255

THE INSURANCE ACT

This Act provides for compulsory payments to be made by the issuer to the beneficiaries where a motor vehicle accident results in death. Referred to as Section B benefits, death benefits, or no-fault benefits, these payments are the obligation of the insurance company regardless of the cause of the accident. The amounts involved are $5,000 where the

deceased was the head of the household or a spouse in a two-parent household, and between $500 and $1,500 where the deceased was a dependent relative.

Where the head of the household dies, the insurer must also pay $1,000 for each surviving member of the family. Where there are two or more survivors, an additional one per cent per week of the total sum already payable, must be paid for the next two years.

Where the accident victim survives but is totally disabled the Act imposes an obligation on the insurer to pay the injured party 80% of her/his gross weekly earnings to a maximum of $150 per week for a period of 104 weeks.

All of these benefits are no-fault benefits and are the responsibility of the insurance company regardless of the cause of the accident or the nature of the victim's policy. Under this act, benefits are payable to a common-law partner if the deceased lived with that person for a period of five years prior to the mishap. This qualifying period is reduced to two years if the deceased co-habited with a common-law partner during that time and one or more children resulted from the union.

THE FATAL ACCIDENTS ACT

This Act creates a statutory right in the executor or administrator of a deceased person, where death was caused by some wrongful act or neglect, to bring an action on behalf of the spouse, parent, child, brother or sister of the deceased. *The Fatal Accidents Act* creates not only a right to sue for damages regardless of loss, but sets a minimum quantity of damages ($3,000) where the suit on behalf of a spouse, parent or child.

Student Financial Assistance

If you are an Alberta resident and require financial funding to pursue your education, you may be eligible for funds administered by the Students Finance Board. A wide range of programs exist to help students studying on a part-time or full-time basis, at the secondary or post-secondary levels. These programs include guaranteed, interest-free, partially forgivable loans as well as grants.

The Students Finance Board also administers a comprehensive group of prizes, scholarships and awards designed to recognize achievement and encourage excellence at all levels of academic endeavour. The scholarships and awards offered under the Alberta Heritage Scholarship Fund are of particular significance in this regard.

For further information please contact:

Students Finance Board
10th Floor, Baker Centre
10025 - 106 Street
Edmonton, Alberta
T5J 1G4

Telephone: 427-2740

Students Finance Board
805 Ninth Street, S.W.
Calgary, Alberta
T2P 2Y6

Telephone: 297-6344

The Ombudsman

By a 1967 Act, a Commissioner of the Alberta Legislature was appointed. This is the Ombudsman, who investigates complaints made by persons who feel they have suffered some injustice through administrative decisions and acts of officials in the Alberta government or its agencies. He also undertakes investigations on any matters he considers necessary.

Complaints must be made in writing. An investigation is carried out privately and the complainant is informed of the results. If remedial action is necessary, the Ombudsman may make a recommendation on your behalf to the department concerned, the Lieutenant-Governor-in-Council, or to the Legislature. All cases are reported annually to the Legislature.

The Ombudsman handles only matters relating to the Alberta government. He has no jurisdiction over matters involving the federal or municipal governments, private business or problems of a personal nature; nor can he intervene in the legal process of the courts.

If you wish to have a matter investigated by the Office of the Ombudsman contact:

1630 Phipps-McKinnon Building
10020 - 101A Avenue
Edmonton, Alberta
T5J 3G2

Telephone: 427-2756

1080 McFarlane Tower
700 Fourth Avenue, S.W.
Calgary, Alberta
T2P 3J4

Telephone: 297-6185